TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 1[illegible]

JAMES KNOTT, PETITIONER,

vs.

BOTANY WORSTED MILLS AND HENRY P. WINTER AND CHARLES F. SMILLIE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED NOVEMBER 16, 1903.
CERTIORARI AND RETURN FILED DECEMBER 21, 1903.

(16,720.)

(16,720.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 194.

JAMES KNOTT, PETITIONER,

vs.

BOTANY WORSTED MILLS AND HENRY P. WINTER AND CHARLES F. SMILLIE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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1 United States District Court, Southern District of New York.

BOTANY WORSTED MILLS, Libellant and Appellee,
vs.
JAMES KNOTT, Respondent and Appellant.

HENRY P. WINTER and CHARLES F. SMILLIE, Libellants and Appellees,
vs.
JAMES KNOTT, Respondent and Appellant.

Statement.

1895.
May 2. Libel filed (Botany worsted mills).
Aug. 15. Answer and interrogatories filed (Botany worsted mills).
Nov. 1. Libellant's answers to interrogatories filed (Botany worsted mills).
Sept. 24. Libel filed (Winter & Smillie).
1896.
May 29. Answer and interrogatories filed (Winter & Smillie).

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June 5. Cause tried before Hon. Addison Brown, U. S. district judge.
Oct. 15. Opinion rendered directing decree to be entered for libellants with reference to compute amount of damage.
Dec. 5. Final decree entered (Botany worsted mills).
7. Notice of appeal filed " " "
26. Assignment of errors filed " " "
Nov. 2. Final decree entered (Winter & Smillie).
17. Notice of appeal filed "
Dec. 26. Assignment of errors "

To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The libel and complaint of the Botany Worsted Mills, of Passaic, N. J., against James Knott, of Newcastle-on-Tyne, England, owner of the steamship *Portug-ese Prince*, in a cause of contract, civil and maritime, alleges as follows:

I. That your libellant is a corporation organized under the laws of the State of New Jersey, and carrying on business at Passaic, N. J.

II. That the respondent, James Knott, is, as your libellant is informed and believes, a resident of Newcastle-on-Tyne, England, and at the times herein mentioned was and now is the owner of the British steamship *Portug-ese Prince*.

III. That at all the times herein mentioned said steamship *Portug-ese Prince* was engaged in business as a common carrier.

IV. That on — about the 21st and 24th days of December, 1894,

there were shipped on board the said steamship *Portug-ese Prince* then lying at the port of Buenos Ayres, in the Argentine Republic, and bound for the port of New York, by the firm of Waetge & Schlief, 122 bales of wool, 53 thereof being marked "B. W.
3 M. pasto fuerte" and numbered 1 to 53 inclusive and 69 thereof marked "B. W. M. pasto fuerte supra" and numbered from 54 to 122 inclusive, the same being the property of your libellant, to be carried and transported to the port of New York, and there delivered to your libellant, and that thereupon the master or agents of said steamship *Portuguese Prince* signed bills of lading for said 122 bales of wool, in and by which they acknowledged the receipt thereof in good order and condition, and undertook and agreed to deliver the same in like good order and condition, at the port of New York, to order, for a freight agreed to be paid therefor, and that thereafter the said bills of lading were duly endorsed by the shippers and delivered to your libellant.

V. That thereafter said steamship sailed from the port of Buenos Ayres, with said wool on board, and arrived at the port of New York on or about the 30th day of March, 1895, and there delivered said 122 bales of wool, but not in the like good order and condition as received, 52 of said bales of wool, numbered 1, 2, 4, 5, 11, 12, 14, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 53, 54, 55, 56, 57, 59, 60, 62, 63, 64, 66, 72, 73, 74, 75, 76, 78, 79, 81, 82, 84, 85, 86, 88, 89, 90, 91, 92, 99, 100, 112, 114, 117, being damaged and that the damage to said 152 bales of wool amounts to the sum of $1,049.31.

VI. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, your libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction may issue against the respondent, James Knott, and in case he cannot be found, then that his goods and chattels be attached to the amount sued for, and that he may be required to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to
4 decree the payment of the amount due to your libellant with interest and costs, and that it may have such other and further relief in the premises as in law and justice it may be entitled to receive.

GEORGE A. BLACK,
Proctor for Libellant, 44 Pine Street, New York City.

UNITED STATES OF AMERICA, }
District of New Jersey, } *ss:*

Carl Pfeil, being duly sworn, says that he is the secretary of the Botany worsted mills; that the foregoing libel is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

C. PFEIL.

Sworn to before me, this 1st day of May, 1895.

CHARLES RUST,
[SEAL.] *Notary Public of New Jersey.*

(Endorsed:) Libel. Filed May 2, 1895.

To the Honorable Addison Brown, United States district judge for the southern district of New York:

The answer of James Knott, owner of the steamship *Portuguese Prince*, to the libel and complaint of the Botany Worsted Mills, in a cause of contract, civil and maritime, alleges as follows:

1. He admits the matters alleged in the first article of the libel.

2. He admits the matters alleged in the second article of the libel.

3. Answering the fourth article of the libel, defendant alleges that he has no knowledge or information sufficient to form a belief regarding the shipment of wool except the recitals contained in the bills of lading, which acknowledge that on or about the 21st and 24th days of December, 1894, there were shipped on board of said steamship *Portuguese Prince*, then lying at the port of Buenos Ayres, in the Argentine Republic, and bound to the port of New York, by the firm of Waetge & Schlief, 122 bales of wool, 53 thereof being marked "B. W. M. pasto fuerte" and numbered 1 to 53 inclusive, and 69 thereof being marked "B. W. M. pasto fuerte supra," and numbered from 54 to 122 inclusive, to be carried and transported to the port of New York; and that thereupon the agents of said steamship at Buenos Ayres signed bills of lading for said 122 bales of wool, in and by which they acknowledged the receipt thereof in apparent good order and condition, and undertook and agreed to deliver the same in the like order and condition at the port of New York, and to order, for a freight agreed to be paid therefor, and upon the terms, conditions, exceptions, and limitations contained in the said contract of carriage. He denies any knowledge or information sufficient to form a belief as to whether the said bales were the property
6 of the libellant at the time of shipment; but admits that thereafter said bills of lading were duly endorsed by the shippers and delivered to the libellant, and that at the time of delivery the said wool was the property of the libellant.

4. Answering the fifth article of the libel, he alleges that thereafter the said steamship sailed from the port of Buenos Ayres with said wool on board, and arrived at the port of New York on or about the 30th day of March, 1895, and there delivered said 122 bales of wool pursuant to the terms and provisions of the said bills of lading unto the libellant; and that at the time of delivery certain of the said bales had been in contact with drainage from wet sugar carried in the ship on the voyage; but as to whether the said contact with sugar drainage caused a damage, and, if so, as to the number of bales affected, he denies any knowledge or information sufficient to form a belief. In the alternative, he admits that if contact with the said sugar constitutes a damage, the amount thereof, for the purposes of this case, may be taken to be $1,049.31.

5. He denies that all and singular the premises in said libel are true, but admits the jurisdiction of this honorable court.

6. Further answering the said libel, defendant alleges that the said bills of lading, under which it was agreed that said merchandise should be carried, contained amongst others, the following terms and conditions: "With liberty * * * to call at any port or

ports in or out of the customary route" (between Buenos Ayres and New York) "in any order, to receive and discharge * * * cargo * * * and for any other purpose whatever; and with liberty to carry goods, or horses, cattle, sheep, or other live animals, on deck or elsewhere, in the said ship, and to carry goods of all kinds, dangerous or otherwise."

"To be delivered in the like good order and condition at the aforesaid port of New York * * * negligence of master or mariners * * * and all damage arising from the goods
7 by stowage, or contact with, or by sweating, leakage, smell, or evaporation from them * * * however caused or otherwise howsoever * * * or any other peril of the seas, rivers, navigation * * * of whatever nature or kind, and whether any of the perils, causes, or things above mentioned, or the loss or injury arising therefrom be occasioned by the wrongful act, default, negligence, or error in judgment of the owners, masters, officers, mariners, crew, stevedores, engineers and other persons whomsoever in the service of the ship, whether employed on the said steamer or otherwise, and whether before or after, or during the voyage, or for whose acts the ship-owner would otherwise be liable, or by unseaworthiness of the ship at the beginning, or at any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness * * * excepted." "Weight and condition of contents unknown."

"This contract shall be governed by the law of the flag of the ship carrying the goods."

The *Portuguese Prince* is a British vessel, and at all the times in question was under the British flag; and defendant avers that each and all of the foregoing exceptions are valid under English law. He further avers, in the alternative, that each and all of the said exemptions are valid by the laws of the Argentine Republic, the place where the said contract was made.

7. Under the said liberty to trade on the voyage, the *Portuguese Prince* carried cargo stowed in the No. 3 and No. 4 holds for delivery at intermediate ports, and at one such intermediate port, before the said goods stowed in the after part of the ship were discharged, a quantity of wet sugar in bags was taken aboard, stowed in the lower No. 1 or No. 2 hold, and the balance thereof, for which there was no room below, was stowed in the after part of the No. 2 'tween-decks, a steel deck properly supplied with scupper pipes. The said
8 sugar was properly stowed and dunnaged, and all reasonable provision was made for the escape of the said drainage into the lower hold. The wool in question was carried in the No. 1 'tween-decks, and was properly stowed and dunnaged, each part of the cargo being separated and protected from the other. At a later port on the voyage, those in charge of the vessel omitted to preserve her proper trim whilst discharging and reloading cargo from and into the after holds, and in consequence thereof, a quantity of drainage from the sugar stowed in the No. 2 'tween-decks, which up to that time, while the vessel was in proper trim, had found its way to the limbers, and had done no damage to the libellant's cargo, flowed

out from amongst the bags forward, and coming in contact with the bales of wool, was drawn up into the bales, causing the ends of the bales which were on the dunnage to be affected by the sugar drainage several inches up the bales. The trim of the vessel was thereupon corrected, so that she was slightly by the stern, as before; and thereafter no further damage to said wool arose from drainage from the said sugar, which passed off as before through the scupper pipes to the bilges.

8. The defendant alleges that the said wool and the said sugar were both properly stowed and dunnaged with reference to each other; and that the said damage arose from the fault of those in charge of the vessel to preserve her proper trim whilst trading within the liberty contained in the bills of lading, and that the risk of such damage was, under the terms and conditions of the bills of lading above quoted, agreed to be borne by the owner of the wool. In the alternative, he alleges that if the different portions of the cargo were improperly stowed with reference to each other, then the said damage is within the exception of stowage and damage arising from the negligence of the officers, servants, or stevedores above set forth.

9. The defendant is ignorant of the charges of fault or neglect
9 intended to be proved or urged at the trial by the libellant, and is, therefore, unable to plead to the said charges specifically; but, upon information and belief, he alleges that the damage to the said bales, if any, caused by the said sugar drainage was a loss within one or more of the above-quoted exceptions contained in the said bills of lading, or within other exceptions contained therein, to which respondent will beg leave to refer at the trial, and that the said alleged loss or damage was, under the terms of the contract of carriage, to be borne by the owner of the cargo and was not to be borne by the ship or by the defendant. He further avers that said contract contained in the said bills of lading is to be expounded and interpreted according to the English law, with reference to which the said contract was made.

10. Further answering said libel in the alternative, defendant alleges that he used all due diligence to make the said vessel seaworthy and have her properly manned, outfitted, and equipped for the voyage from Buenos Ayres and the intermediate ports to New York, and that if any loss or damage to the said wool occurred upon the voyage owing to the default or neglect of his servants, such neglect and default constituted a fault or error in the management or navigation of the vessel within the third section of an act of Congress entitled "An act relating to the navigation of vessels," &c., approved February 13th, 1893, and that, under and by the terms of the said statute, the defendant is absolved from all liability for the said alleged loss.

11. All and singular the premises of this answer are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore defendant prays said libel may be dismissed, with costs, or that the court will make such other or different decree as

the justice of the cause may require; and forasmuch as the matters referred to in the libel and foregoing answer are within the knowledge of the libellant, he further prays that said libellant may
10 be required to make full and true answer to the annexed interrogatories.

CONVERS & KIRLIN,
Proctors for Defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John C. Seager, being duly sworn, says that he is the agent for the defendant in the port of New York, and that the foregoing answer is true according to his information and belief. He further says that the reason why this answer is not verified by the defendant is that the defendant is absent from the district, and resides more than a hundred miles from the place of trial, to wit, at Newcastle-on-Tyne, England.

JOHN C. SEAGER.

Sworn to before me this 14th day of August, 1895.
[SEAL.] FREDERICK GREEN,
Notary Public, N. Y. Co.

Interrogatories Addressed to the Libellant, which it is Required by One of its Officers to Answer in Writing and under Oath.

First interrogatory. Was your company the owner of the goods at the time of shipment, or did you become owner subsequently and before delivery of the wool in New York? If the latter, please state the date on which you became the owner of the goods.

Second interrogatory. Is it not a fact that you or your agent entered the said merchandise at the custom-house in New York, and in such entry recited that the said cargo was imported under the bills of lading annexed thereto and which are referred to in the libel and answer, and also paid the freight under and pursuant to said bills of lading?

11 Third interrogatory. Give a bill of particulars of any alleged fault or neglect on the part of the agents or servants of the defendant, or of any alleged unseaworthiness of the ship, which you claim caused or contributed to the loss referred to in the libel, and for which you claim the defendant should be held responsible in this cause.

Fourth interrogatory. Is there any other matter or thing which you intend to allege or prove or urge in argument at the trial, as a cause or reason for asking a decree against the defendant in this cause, so far as you now know or believe? If so, state it.

Fifth interrogatory. Is it not a fact that the bills of lading referred to in the libel contained, amongst others, the terms, exceptions and conditions set forth in the sixth paragraph of the answer?

Sixth interrogatory. Is it not a fact that each of the said clauses set forth in the sixth paragraph of the answer would form a valid and binding contract under the English law?

Seventh interrogatory. Is it not a fact that ship-owners are permitted by English law to exempt themselves from liability for the negligence of their servants in the loading, stowage or carriage of cargo?

CONVERS & KIRLIN,
Proctors for Defendant.

(Endorsed:) Answer. Filed Aug. 15, 1895.

12 U. S. District Court, Southern District of New York.

BOTANY WORSTED MILLS
vs.
JAMES KNOTT.

Answer of Libellant to the Interrogatories Annexed to the Answer Herein.

To the first interrogatory it says that it was the owner of the goods at the time of shipment.

To the second interrogatory, it is the fact that its agents entered the merchandise in the custom-house in New York, and in such entry referred to the said cargo as imported under the bill of lading annexed thereto. The bill of lading referred to in the libel and answer is that used in entering said goods. Libellant paid the freight at the rate specified in the bill of lading.

To the third interrogatory, libellant has not alleged any fault or neglect of the agents or servants of the respondent, save the failure to deliver said cargo in the like good order as received, nor has it alleged that said vessel was unseaworthy. It has no knowledge as to the faults or neglect of the agents or servants of the respondent save in not delivering the said cargo in the like good order as received nor of the unseaworthiness of said vessel, save as stated in the answer herein, to wit, a quantity of drainage from the sugar stowed in the between-decks, which flowed from those bags forward and on to the bags of wool, which the said answer states was carried in the No. 1 between-decks, due to the vessel being out of her proper trim, and to the fact which has been communicated to libellant that the bulkhead between the compartments was made of wool, and permitted the drainage to pass through from the No. 3 hold
13 into the No. 2 hold, where the libellant is informed the said wool was stowed, but as to the accuracy of such information it has no knowledge, but it claims that such injury to its cargo was caused by the improper stowage thereof in a place where the drainage of sugar could reach it, and that the said steamship was unseaworthy as to said cargo, in the place where it was stowed.

To the fifth interrogatory, the bills of lading referred to in the libel contained, among other things, the matter set forth in the sixth paragraph of the answer.

To the seventh interrogatory, libellant is informed and believes that some English courts have held that under the laws of England the owners of vessels are permitted in England to make contracts

which exempt them from liability for the negligence of their servants in loading, stowage and carriage of goods.

GEO. A. BLACK,
Lib'l's Proctor.

DISTRICT OF NEW JERSEY, *ss:*

Oscar Dresser, being duly sworn, says that he is the treasurer of the Botany worsted mills, a corporation, and that the foregoing answers are true of his own knowledge except as to the matters therein stated upon information and belief, and that as to those matters he believes them to be true.

(S'g'd) OSCAR DRESSER.

Sworn to before me this 21st day of October, 1895.

CHARLES RUOT,
[SEAL.] *Notary Public of N. J.*

(Endorsed:) Answer to interrogatories. Filed Nov. 1, 1895.

14 To the Honorable Addison Brown, district judge of the United States for the southern district of New York:

The libel and complaint of Henry P. Winter and Charles F. Smillie, composing the firm of Winter & Smillie, merchants in the city of New York, libellants, against James Knott of Newcastle-upon-Tyne, England, owner of the steamship *Portuguese Prince*, respondent, in a cause of contract, civil and maritime, alleges and articulately propounds as follows:

First. At all the times hereinafter mentioned, your libellants were and still are merchants in the city of New York, doing business under the firm name and style of Winter & Smillie.

Second. The respondent, James Knott, is, as your libellants are informed and verily believe, a resident of Newcastle-upon-Tyne, England, and at all the times hereinafter mentioned was and now is the owner of the British steamship *Portuguese Prince.*

Third. At all the times hereinafter mentioned, the said steamship *Portuguese Prince* was engaged in business as a common carrier.

Fourth. On or about the 24th day of December, 1894, there were shipped on board of said steamship *Portuguese Prince*, then lying at the port of Buenos Ayres, in the Argentine Republic, and bound for the port of New York, by Henry Caulliez of Buenos Ayres, 39 bales of wool, of which 10 were marked C. H. E. and numbered 101 to 110, inclusive, 10 were marked R. I. A. and numbered 210 to 219, inclusive, 10 were marked R. I. S. and numbered 320 to 329, inclusive, 5 were marked H. E. R. and numbered 401 to 405, inclusive, 2 were marked E. A. I. and numbered 601 to 602, inclusive, and 2 were marked Z. I. G. and numbered 603 and 604. All of the said bales were the property of your libellants and were to be
15 conveyed and transported to the port of New York and there delivered to your libellant. The masters or agents of the said steamship *Portuguese Prince* thereupon signed bill of lading for said 39 bales of wool in and by which they acknowledged the re-

ceipt thereof in good order and condition and undertook and agreed to deliver the same in like good order and condition at the port of New York to order, for freight stipulated to be paid therefor. Thereafter the said bill of lading was duly endorsed by the shipper and delivered to your libellants.

Fifth. Thereafter the said steamship *Portuguese Prince* sailed from the port of Buenos Ayres with said wool on board and arrived at the port of New York on or about the 30th day of March, 1895, and there delivered the said 39 bales of wool, but not in the like good order and condition as received, 37 of said bales of wool, numbered 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 401, 402, 403, 404, 405, 601, and 602, being damaged, and that the damage to said 37 bales of wool amounts to the sum of $345.58.

Sixth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellants pray that a process in due form of law according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction may issue against the respondent James Knott, and in case he cannot be found, then that his goods, chattels and credits be attached to the amount sued for, and that he may be required to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to decree payment of the amount due to your libellants, together with interest and costs, and that your libellants may have
16 such other and further relief in the premises as in law and justice they may be entitled to receive.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellants 54 *Wall Street, New York City.*

CITY AND COUNTY OF NEW YORK, }
Southern District of New York, } *ss:*

Henry P. Winter, being duly sworn, deposes and says that he is one of the libellants above named; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

HENRY P. WINTER.

Sworn to before me this 24th day of September, 1895.

[L. S.] GEORGE CROMWELL,
Notary Public, Richmond County.

Certificate filed in N. Y. Co.

(Endorsed:) Libel. Filed Sept. 24, 1895.

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17 To the Honorable Addison Brown, United States district judge for the southern district of New York:

The answer of James Knott, owner of the steamship *Portuguese Prince*, respondent, to the libel and complaint of Henry P. Winter and Charles F. Smillie, composing the firm of Winter & Smillie, merchants of the city of New York, in a cause of contract, civil and maritime, alleges as follows:

First. He admits the matters alleged in the first article of the libel.

Second. He admits the matters alleged in the second article of the libel.

Third. He admits the matters alleged in the third article of the libel.

Fourth. Answering the fourth article of the libel, the respondent alleges that he has no knowledge or information sufficient to form a belief regarding the shipment of wool mentioned in the libel, except the recitals contained in the bill of lading therefor, which acknowledges that on or about the 24th day of December, 1894, there were shipped on board the steamship *Portuguese Prince*, then lying at the port of Buenos Ayres in the Argentine Republic, and bound to the port of New York, by Henry Caulliez, 39 bales of wool, marked as alleged in the libel, to be carried and transported to the port of New York; and that thereupon the agents of said steamship at Buenos Ayres signed a bill of lading for said 39 bales of wool, in and by which they acknowledged the receipt thereof, in apparent good order and condition, and undertook and agreed to deliver the same at the aforesaid port of New York in the like good order and condition, unto order, for a stipulated freight, and upon the terms, conditions, exceptions and limitations contained in the said contract of carriage.

18 He denies any knowledge or information sufficient to form a belief as to whether the said bales were the property of the libellants at the time of shipment, but admits that thereafter said bill of lading was duly endorsed by the shippers and delivered to the libellants, and that at the time of delivery thereof said wool was the property of the libellants.

Fifth. He admits that thereafter the said steamship *Portuguese Prince* sailed from the port of Buenos Ayres with said wool on board, and arrived at the said port of New York on or about the 30th day of March, 1895, and there delivered the said 39 bales of wool, pursuant to the terms, conditions and provisions of the said bill of lading unto the libellants; and that at the time of delivery certain of the said bales had been in contact with drainage from wet sugar carried in the ship on the voyage; but as to whether said contact with sugar drainage caused the damage, and if so, as to the number of bales affected, he denies any knowledge or information sufficient to form a belief.

If any of said bales of wool was damaged, he denies any knowledge or information sufficient to form a belief as to the amount of damage thereto.

Sixth. He denies that all and singular the premises of the libel are true, but he admits the jurisdiction of this honorable court.

Seventh. Further answering the said libel, and for a further and separate defense, the respondent alleges:

(1.) That the said bill of lading, under which it was agreed that said merchandise should be carried, contained, amongst others, the following terms and conditions:

"With liberty * * * to call at any port or ports in or out of the customary route (between Buenos Ayres and New York) in any order, to receive and discharge * * * cargo * * * and for any other purpose whatever; and with liberty to carry goods, or horses, cattle, sheep, or other live animals, on deck or elsewhere, in the said ship, and to carry goods of all kinds, dangerous or otherwise. To be delivered in the like good order and condition at the aforesaid port of New York * * * negligence of master or mariners * * * and all damage arising from the goods by stowage, or contact with, or by sweating, leakage, smell or evaporation from them * * * however caused, or otherwise howsoever * * * or any other peril of the seas, rivers, navigation * * * of whatever nature or kind, and whether any of the perils, causes, or things above mentioned, or the loss or injury arising therefrom be occasioned by the wrongful act, default, negligence, or error in judgment, of the owners, masters, officers, mariners, crew, stevedores, engineers, and other persons whomsoever in the service of the ship, whether employed on the said steamer or otherwise, and whether before, or after, or during the voyage, or for whose acts the ship-owner would otherwise be liable, or by unseaworthiness of the ship at the beginning, or at any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness * * * excepted. Weight and condition of contents unknown. This contract shall be governed by the law of the flag of the ship carrying the goods."

(2.) Under the said liberty to trade on the voyage the *Portuguese Prince* carried cargo stowed in the No. 3 and 4 holds, for delivery at intermediate ports, and at one such intermediate port, before the said goods, stowed in the after part of the ship, were discharged, a quantity of wet sugar in bags was taken on board, part of which was stowed in the lower No. 2 hold and the balance thereof, for which there was no room below, was stowed in the after part of the No. 2 between-decks, a steel deck properly supplied with scupper pipes.

The said sugar was properly stowed and dunnaged, and all reasonable provision was made for the escape of the drainage therefrom into the lower hold. The wool in question was carried in the No. 1 between-decks, or the forward part of the No. 2 between-decks, and was properly stowed and dunnaged, each part of the cargo being separated and protected from the other.

At the time of leaving Buenos Ayres and the port where this wet sugar was loaded, the vessel was properly trimmed, being by the stern, and all drainage from the sugar went aft and down to the lower hold by the scupper pipes without coming in contact with

the wool. At a later port on the voyage, those in charge of the vessel omitted to preserve her proper trim, whilst discharging and reloading cargo from and into the after holds, and in consequence thereof, drainage from the sugar stowed in the after part of the No. 2 between-decks, which, up to that time, while the vessel was in proper trim, had found its way to the linbers and done no damage to the wool, flowed out from amongst the bags forward, and coming in contact with the bales of wool, was drawn up into the bales, causing the ends of the bales which were on the dunnage to be affected by the sugar drainage to the height of several inches. The trim of the vessel was thereupon corrected, so that she was by the stern as before, and thereafter no further damage to said wool arose from drainage from the said sugar, which passed off as before through the scupper pipes to the bilges.

(3.) In the alternative, the respondent alleges that if the different parts of the cargo were improperly stowed, with reference to each other, then the said damage is within the exception of stowage and damage arising from the negligence of the officers, servants or stevedores, above set forth.

21 (4.) The respondent is ignorant of the charges of fault or of neglect intended to be proved or urged at the trial by the libellants, and is, therefore, unable to plead to the said charges specifically; but, upon information and belief, he alleges that the damage to said bales, if any, caused by the said sugar drainage, was a loss within one or more of the above-quoted exceptions contained in the said bill of lading, or within other exceptions contained therein, to which respondent will beg leave to refer at the trial; and that the said alleged loss or damage was, under the terms of the contract of carriage, to be borne by the owner of the cargo, and was not to be borne by the ship, or by the responoent.

He further avers that the said contract contained in the said bill of lading is to be expounded and interpreted according to the English law, with reference to which the said contract was made, and that by said English law exemptions from and liability for loss or damage caused by negligence are valid.

(5.) Respondent alleges that he used all due diligence to make the said vessel seaworthy, and have her properly manned, outfitted and equipped for the voyage from Buenos Ayres and the intermediate ports to New York; and that if any loss or damage to the said wool occurred upon the voyage, owing to the default or neglect of his servants, such neglect and default constituted a fault or error in the management or navigation of the vessel, within the third section of an act of Congress, entitled "An act relating to the navigation of vessels," &c., approved February 13, 1893, and that under and by the terms of the said statute, the respondent is absolved from all liability for the said alleged loss.

Eighth. All and singular the premises of this answer are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, the respondent prays that said libel may be dismissed with costs, or that the court will make such other or different

decree as the justice of the cause may require; and forasmuch
22 as the matters referred to in the libel and foregoing answer are within the knowledge of the libellants, he further prays that said libellants may be required to make full and true answers to the annexed interrogatories.

CONVERS & KIRLIN,
Proctors for Respondent.

SOUTHERN DISTRICT OF NEW YORK, } ss :
City and County of New York, }

John C. Seager, being duly sworn, says that he is the agent for the respondent in the port of New York, and that the foregoing answer is true according to his information and belief. He further says that the reason this answer is not verified by the respondent is that he is absent from the district, and resides more than a hundred miles from the place of trial, to wit: Newcastle-on-Tyne, England.

JOHN C. SEAGER.

Sworn to before me this 28th day of May, 1896.

FREDERICK GREEN,
[SEAL.] *Notary Public, New York County.*

23 *Interrogatories Addressed to the Libellants, Which One of Them, Acquainted with the Facts, is Required to Answer in Writing and under Oath.*

First interrogatory (*a*). Were you the owners of the goods at the time of shipment, or did you become owners subsequently and before delivery of the wool in New York? (*b.*) If the latter, please state the date on which you became the owners of the goods.

Second interrogatory. Is it not a fact that you or your agents entered the said merchandise at the custom-house at New York, and in such entry recited that the said cargo was imported under the bill of lading annexed thereto, and which is referred to in the libel and answer, and also paid the freight under and pursuant to the said bill of lading?

Third interrogatory. Give a bill of particulars of any alleged fault or neglect on the part of the agents or servants of the respondent, or of any alleged unseaworthiness of the ship, which you claim caused or contributed to the loss referred to in the libel, and for which you claim the respondent should be held responsible in this cause.

Fourth interrogatory. Is it not a fact that the bill of lading referred to in the libel contained, amongst others, the terms, exceptions, and conditions set forth in the first paragraph of the further and separate defense of the answer?

Fifth interrogatory. Is it not a fact that ship-owners are permitted by English law to exempt themselves from liability for the negligence of their servants in the loading, stowage or carriage of cargo?

CONVERS & KIRLIN,
Proctors for Respondent.

(Endorsed:) Answer & interrogatories. Filed May 29, 1896.

24 United States District Court, Southern District of New York.

THE BOTANY WORSTED MILLS
vs.
JAMES KNOTT.

WINTER
vs.
THE SAME.

Before Hon. Addison Brown, Judge.

NEW YORK, *June* 5, 1896.

Appearances.

George A. Black, Esq., for The Worsted Mills.
Butler, Stillman & Hubbard, Esquires (Mr. Mynderse), for libellant Winter.
Convers & Kirlin, Esquires (Mr. Kirlin), for the respondent.

The claims of the libels and answers are stated.

It is admitted by respondent that the vessel was a common carrier.

Mr. KIRLIN: We admit the amount of damage in the Worsted Mills case. In the Winter case the libel was filed later, and I have not had time to verify it, but I presume it is correct.

Also, the libellant alleged in the fourth article that the property at the time of the shipment belonged to the libellant. That was denied in the answer but is now admitted.

Mr. KIRLIN: I offer in evidence the answers to the interrogatories in the Worsted Mills case. In the other case the interrogatories are not answered.

Mr. MYNDERSE: We will take the answers of Mr. Black to the interrogatories as our answers.

25 Mr. KIRLIN: I consent to that.

Mr. KIRLIN: I offer in evidence a stipulation as to certain facts.

It is marked Respondent's Exhibit A.

Mr. KIRLIN: I also offer in evidence the bills of lading for both consignments.

The two bills of lading in the Worsted Mills case are marked Respondent's Exhibit B.

The bill of lading in the Winter case is marked Respondent's Exhibit C.

Mr. KIRLIN: I also offer in evidence pages 11 and 12 of the official log, giving dates of sailing, arrival and departure at the various ports and the draft at each port.

(It is consented that a copy be substituted in place of the original.)

The pages of the official log are marked Respondent's Exhibit D.

Mr. KIRLIN: I also offer in evidence the entries in the deck log, beginning at Pernambuco on Tuesday, the 19th of February, 1895, and including the entries up to Wednesday, March 20.

The entries are marked Respondent's Exhibit E.

Mr. BLACK: It appears by the log that after leaving Buenos Ayres the vessel visited Santos, Rio Janeiro, Bahia and Maceo and then went to Pernambuco. That at each of these ports she took in and discharged cargo, and that when she left Santos she was drawing 20 ft. forward and 16 ft. aft, or was 4 ft. by the head. That when she arrived at Rio she was drawing 19 ft. 8 forward and 16 ft. aft, or was 3 ft. 8 by the head.

Mr. KIRLIN: I call attention to the entries of draft at Pernambuco, Para, Port of Spain and Grenada, which are as follows:

It appears that on arrival at Pernambuco, February 19, 1895, at 2.30 p. m., the ship's draft was 14 ft. 6 forward, 21 ft. 3 aft.
26 That on sailing from Pernambuco, February 24, at 4 p. m., her draft was 21 ft. 6 forward, 22 ft. 4 aft.

That on arrival at Para, March 3, 1895, 9 a. m., her draft was 21 ft. 3 forward and 21 ft. 9 aft. That on sailing from Para, March 10, at 8 p. m., her draft was 19 ft. 6 forward and 17 ft. 6 aft, or 2 ft. by the head.

That on arriving at Port of Spain, (Trinidad,) on March 16, at 8 p. m., her draft was 19 ft. 3 forward and 17 ft. 6 aft. That on leaving Port of Spain, March 18, at 11 p. m., her draft was 18 ft. forward and 19 ft. aft.

That on arrival at Grenada, March 19, at 2.30 p. m., her draft forward was 18 ft. and aft 18 ft. 11. That on departing from Grenada, March 20, at 1 a. m., her draft was 17 ft. 6 forward and 21 ft. 6 aft. That she remained by the stern the rest of the voyage to New York, where she arrived on the 31st of March, at 11.15 p. m., her draft forward being 17 ft. 3 and aft 20 ft. 5.

HERBERT B. SAUNDERS, being duly sworn and examined as a witness for the respondent, testifies:

By Mr. KIRLIN:

Q. What is your business?
A. Marine superintendent.
Q. Of the Prince Line of New York?
A. Of the Prince Line of New York.
Q. The *Portuguese Prince* belongs to the Prince line?
A. The *Portuguese Prince* belongs to the Prince line.
Q. Where does that line go?
A. Trades between New York and Brazil, and the River Plata.
Q. Was the *Portuguese Prince* making the voyage in that line when the damage to the wool took place?
A. Yes, sir.
Q. Is that paper which you have in your hand a plan of the ship?
A. A plan of the *Portuguese Prince.*
Q. You know the ship?
A. I know the ship.
27 Q. Have you been aboard of her at different times?
A. Yes, sir.

The plan is offered in evidence. It is marked Respondent's Exhibit F.

Q. What are your functions?
A. Marine superintendent.
Q. What do you do when vessels come in?
A. General superintending of all the work connected with the ship—loading and discharging.
Q. Do you go to the dock?
A. I go to the dock.
Q. See the cargo in and out?
A. I do.
Q. Did you attend upon the *Portuguese Prince* upon her arrival from this voyage?
A. I did.
Q. Did you see the damaged wool?
A. I did.
Q. Did you see it before it all came out?
A. I saw it before it was touched.
Q. Did you see the damage?
A. I saw the damage.
Q. Will you show on the plan of the ship where the wool was stowed?
A. The wool was stowed in the fore part of the fore between-decks, in the fore part of the temporary bulkhead, and the sugar was stowed on the after part, as marked on the plan.
Q. Have you drawn a line there indicating where the wooden bulkhead was?
A. I have; it was on the after part of the foremast.
Q. How far was the wool from the bulkhead?
A. From the wooden bulkhead? About ten feet from the fore part of the wooden bulkhead.
Q. Where was the sugar?
A. About 25 to 30 feet on the after part of the wooden bulkhead.
Q. Does that mean aft from the wooden bulkhead?
A. Aft from the wooden bulkhead.
Q. Extending back how far?
A. Right to the iron bulkhead next to the bunker.
Q. How much sugar was there in there?
A. About 200 tons.
Q. What kind of sugar was it?
A. Green sugar.
Q. Describe how the sugar was stowed?
A. The sugar was stowed in tiers properly dunnaged.
28 Q. What kind of dunnage was under it?
A. Three-inch deals and hatches.
Q. Under the whole of it?
A. Under the whole of it.
Q. What was there, if anything, between the foremost part of the sugar and the wooden bulkhead?
A. Nothing at all.

Q. No cargo stowed there?
A. No cargo stowed there at all; empty space.
Q. Describe the stowage of the wool?
A. The wool was stowed on the end, properly dunnaged.
Q. In what kind of packages?
A. In bales.
Q. What size bales?
A. Ordinary size; about 8 feet; 4 feet square.
Q. Was there any dunnage under that?
A. Properly dunnaged.
Q. What kind?
A. Deals.
Q. How high?
A. About 2½ or three inches.
Q. Are you a master mariner?
A. I am.
Q. Have you followed the sea for some years?
A. I have.
Q. How long in steamers?
A. Eleven years.

By the COURT:

Q. How much wool did you say there was; was that compartment full forward of the bulkhead?
A. No, the compartment was not quite full.
Q. How far away from the bulkhead did it begin?
A. About 10 feet.
Q. Why is all that space left vacant on each side of the bulkhead?
A. There was no cargo to put in there.
Q. Why wasn't it distributed?
A. Because this bulkhead is only a temporary bulkhead with doors in.
Q. As I understand from what you have said there was a space of 25 or 30 feet aft of the bulkhead with nothing in it?
A. Yes.
Q. And forward of the bulkhead within 10 feet, with nothing in it?
A. Yes, sir. It may have been some of the cargo at an intermediate port, such as Saint Lucia or Trinidad; may have
29 been taken out of the after part.

By Mr. KIRLIN:

Q. State from your experience and judgment whether that dunnage that was under the wool and sugar was the ordinary and usual dunnage.
A. It was above the usual dunnage.
Q. At the time you discovered the damage was there any sugar drainage on the between-decks?
A. There was signs of sugar drainage, but actually no drainage there.

Q. Was there any accumulation?
A. No accumulation at all.
Q. Was there any drainage to touch the wool at the time you saw it?
A. No.
Q. How was the ship trimmed then, by the head or stern?
A. Little by the stern.

By the COURT:

Q. There were indications there had been previous drainage in the forward compartment where the wool was?
A. Yes.
Q. All the way from the bulkhead to the wool?
A. All the way from the sugar to the wool.
Q. And also on the wool did you see it?
A. I saw it on the wool.
Q. But there was nothing there then, you mean what you saw was all dried sugar?
A. All dried sugar.

By Mr. KIRLIN:

Q. Was there any drainage from the sugar at that time?
A. It was draining, yes.
Q. Where was the drainage going?
A. In the after part of the scuppers.
Q. Where are the scuppers?
A. In the after part of the between-decks.
Q. How large are they?
A. 2½ inches.
Q. Where with reference to the engine-room bulkhead were the scuppers?
A. The bunker bulkhead? Close to it.
Q. How near the side of the ship?
A. Just below the stringer.
Q. Practically in the corners, then?
A. Practically in the corners.
Q. How many?
A. One on either side.

By the COURT:

Q. How about the size of those scuppers?
A. They were large size.

By Mr. KIRLIN:

Q. What ship did this used to be?
A. If I remember rightly she was called *St. Dunstan*, either *St. Dunstan* or *St. Romans*, engaged from New York to Liverpool in the cattle trade.
Q. Were there any other scuppers in the between-decks besides those two?
A. Yes, sir.

Q. Where were the next ones forward of it?
A. Abreast of the foremast, as shown on the plan.
Q. Which side of the wooden bulkhead would that be?
A. Just about in the line of the bulkhead.
Q. Where were the next ones?
A. The next ones? There were only two, that is two on either side.

By the COURT:

Q. I don't quite understand what scuppers there were forward of the forward bulkhead.
A. Abreast of the foremast.

By Mr. KIRLIN:

Q. Little forward of the bulkhead?
A. Just slightly, little forward.

By the COURT:

Q. One on either side?
A. One on either side.

By Mr. KIRLIN:

Q. The same kind of scuppers as the other?
A. The same kind.

By the COURT:

Q. Then that would take off drainage from the forward bulkhead?
A. It would take off drainage.
31 Q. This was in the between-decks as I understand?
A. In the between-decks.

By Mr. KIRLIN:

Q. Was there any damaged wool except in the between-decks?
A. No, sir.
Q. What kind of deck is this?
A. An iron deck.

By the COURT:

Q. Was there any leakage through that deck?
A. No, sir; there were three bales damaged with salt water. Not through the deck.
Q. Below under the deck was there any wool?
A. In the fore lower hold there was wool, but no damaged wool.
Q. Any other cargo damaged by sugar drainage in the lower hold?
A. No, sir.

By Mr. KIRLIN:

Q. You said the sugar was draining in the between-decks at the time it was being discharged, was that drainage escaping?
A. Yes, sir.

Q. Where did it go to,?
A. The bilges.
Q. Went down in the limbers?
A. In the limbers.
Q. Was there any accumulation on the deck at all?
A. No, sir.
Q. When the ship is on an even keel how will liquids drain in the forward between-decks?
A. It will drain aft.
Q. How will they drain when——

By the COURT:

Q. Can you tell me how much the pitch is; do you know what the sheer is; that would be from the forward bulkhead or all along between the forward bulkhead and the next one—is there one next to it?
A. There is a water-tight bulkhead or collision bulkhead.
Q. This was not a collision bulkhead?
A. No, sir.
Q. How far aft of that wooden bulkhead was the first bulkhead?
A. The bunker bulkhead.
Q. How far aft was it aft of the forward one?
A. About 80 feet.

32 The WITNESS: By forward bulkhead I mean the division bulkhead in the forward compartment, all of which is aft of the forward bulkhead, which is the collision bulkhead.

By Mr. KIRLIN:

Q. How much will the ship be by the head before fluids will drain forward; can you tell that approximately?
A. This particular ship, if she was six inches by the head it would naturally drain forward because the ship plowing through the water would naturally tend to sink, that is she would dip; if she were perfectly still there would be no drainage six inches by the head, she would still remain stationary.
Q. How with a foot by the head?
A. It would drain forward.
Q. Is the drainage of wet Pernambuco sugar reasonably to be expected by a shipmaster?
A. Yes, sir.
Q. With the knowledge that it would probably drain, do you say the master ought to have taken any precautions with regard to the wool when he put the ship two feet by the head at Para?

Counsel for the Worsted Mills objects to the question as a question of law. Objection sustained.

Q. Was there anything that might have been done by the master of the ship in Para to counteract the change of trim which resulted there from the discharge of the cargo aft?
A. When the master of the ship found that he had no cargo——

Q. Answer yes or no?
A. Yes.
Q. What could he have done?

Counsel for libellant Winter objects, on the ground that it doesn't appear that the master did this at all.

A. When the master of the ship found there was no cargo to take in at Para, it was his duty, knowing the value of the wool, either to protect it or move it to the after part of the vessel.
33 Q. What do you mean by protecting it?
A. He might have taken the sugar and discharged the sugar, put it into another compartment, or transferred the wool, whichever was most convenient.
Q. Could one or the other of those things have been done?
A. They could.
Q. What is your judgment as a master as to the expediency of adopting one or the other of those courses in Para?
A. It should have been done.
Q. Which in your judgment?
A. It would have been easier to shift the wool than to shift the sugar.
Q. How much would it have cost to shift the wool aft?
A. It would cost less than twenty pounds.
Q. Have you been in this port yourself?
A. I have never been in Para, but I know the cost of labor.
Q. Have you traded in South America?
A. I have traded at South America.

Cross-examined by counsel for the Worsted Mills.

By Mr. BLACK:

Q. You say that there were three-inch deals under this sugar and on top of the hatches as dunnage, don't you?
A. No, sir; three-inch deals and hatches, that is, the between-decks hatches were used as well as three-inch deals for dunnage.
Q. You don't mean to say the hatches were on top of the deals?
A. No, sir.
Q. The total amount of space between the deck and bags of sugar you estimated as 3 inches in the greatest place?
A. Yes, sir.
Q. And in the least place?
A. 2½.
Q. What was there under the wool?
A. The same things.
Q. How did those deals run, athwartship or fore and aft?
A. Athwartship.
Q. Under both wool and sugar?
A. Under both wool and sugar.
Q. Have you ever carried this wet sugar yourself?
A. I have.

Q. When it is taken on board it is quite moist, isn't it?

A. It is.

34 Q. And it drains most when it comes fresh on board the ship and is first stowed?

A. Yes, sir.

Q. And gradually decreases as the voyage continues, so that at the early portion of the voyage there would be quite a large accumulation of drainage?

A. It would.

Q. Which you have to expect and do expect?

A. We do.

Q. Was the evidence of the drainage which you saw in the forward compartment quite extensive, did it spread over a large surface?

A. Right across the ship.

Q. How far forward of the wooden bulkhead?

A. If I remember rightly to the third tier.

By the COURT:

Q. To the third tier of wool?

A. To the third tier of wool.

By Mr. BLACK:

Q. How large were the bales of wool?

A. About four feet square and seven or eight feet high.

Q. Were they lying on the larger side?

A. Laying on their end.

Q. So the space you speak of as three tiers would be how much in feet?

A. About 12 feet. I do not mean across the ship, I mean the greatest length.

By the COURT:

Q. How high above the bottom of the wool was the sign of damage?

A. About from 10 to 12 inches, the greatest part.

By Mr. BLACK:

Q. Did that extend completely across the first tier of wool?

A. Across the first tier of wool, yes, sir.

Q. And the same way across the second?

A. No.

Q. It wasn't so high on the second tier?

A. It wasn't so high on the second tier; it didn't extend to all the bales on the second tier.

By the COURT:

35 Q. What is meant by the "second tier," what do you mean by "tier"?

A. Anything is a tier, using a stevedore's phrase, that follows in succession. Pile barrels one on top of the other it is first, second

and third. If you were stowing bales of wool or hogsheads of tobacco it would take the complete space from deck to deck and run fore and aft, you call them tiers just the same.

By Mr. KIRLIN:

Q. Call the rows crossways tiers?
A. Yes, sir.
Q. Is that what you mean by tiers?
A. That is what I meant.
Q. Was there only one bale up and down?
A. Only one bale up and down.
Q. One bale high up and down?
Q. One bale high up and down.
Q. The bale put on end?
A. The bale put on end.
Q. So the long way of the bale was perpendicular?
A. Yes.
Q. And what you call "tier" is a line of those bales running athwartships, or running fore and aft?
A. Running any way as long as it is a continuous line.
Q. You have spoken of tiers?
A. Yes, sir.
Q. Is that a line of bales running athwartships or running fore and aft?
A. It can be both ways as long as it is a continuous line.
Q. Which are you speaking of?
A. Athwartships.
Q. By the "second tier," which showed less sign of drainage, you mean it is the line athwartships that was farther forward?
A. Yes, sir.
Q. The second cross-line forward from the wooden bulkhead?

By Mr. BLACK:

Q. How high up did the sugar drainage show on the second row of bales running forward?
A. Some bales it only showed on the corner, others 7, 8 and 9 inches. The bales in the wing were more damaged than those in the center of the ship.

The COURT: I shall call that the front row.

36 Q. And the third row forward, how was that?
A. Very little damaged.
Q. Was that the last of the rows that showed damage?
A. I think, if I remember rightly, the fourth row forward, the two wing bales were a little damaged.
Q. On which side of the wings; when you speak of the wings do you mean both sides?
A. I mean both sides.
Q. How close together did these pieces of deals lie on the deck forming this dunnage?
A. About 7 to 9 inches apart.

Q. How wide were they?
Q. 11 inches.
Q. And they were really what we call plank 3 inches or 2½ inches thick and from 9 to 11 inches wide?
A. 3 by 11 regulation commercial standard wood.
Q. And the space between them was what?
A. 7 to 9 inches.
Q. Did the space between and the deals themselves show the signs of the sugar drainage?
A. Yes, sir.
Q. How far forward on the deals did you find the signs of sugar drainage?
A. That same distance the wool was damaged.
Q. Did the deals hold clean over to the wings or stop short of the wings?
A. They left a channel.

By the COURT:

Q. Was there any sheer on the floor of that part of the vessel running forward?
A. Yes, sir.
Q. Do you know how much it was?
A. I do not.
Q. Can you give any approximate idea?
A. I could not, sir.
Q. Do you know whether the rate of sheer increased at all towards the forward part of the place where the wool was stowed?
A. It did.
Q. You think the rate of sheer increased?
A. It did.
Q. You understand me, don't you?
A. I understand what you mean.
Q. Before you get to the collision bulkhead, I intended to ask whether the rate of the curvature was increased?
A. Yes, sir.

37 By Mr. BLACK:

Q. How wide was the *Portuguese Prince* at the first row of bales?
A. I should judge about 28 feet.
Q. That would only make seven bales in the row, wouldn't it, of 4 feet square?
A. That is all.
Q. I mean the row nearest the wooden bulkhead?
A. I couldn't say correctly. It wouldn't decrease much.
Q. There couldn't have been more than seven to eight bales of wool in the first row aft?
A. If the beam was 35 feet; why, yes.

By the COURT:

Q. If the beam was 35 feet what would the first row of bales be?
A. Is that over all? Allow me to look at the dimensions of the

ship. (Referring to the plan.) The inside of that ship would be 33 feet 6.

By Mr. BLACK:

Q. Then you couldn't get more than eight bales in a row, could you?

A. We could get eight bales—nine bales. We would squeeze them in, push them in.

By the COURT:

Q. If they are four feet square you couldn't get in nine?

A. They would be so compressed with jacks you could get them in.

Q. Do you mean they could be compressed a foot, a bale could?

A. Yes, sir; we mat them together at the wings and screw a bale in at the center.

By Mr. BLACK:

Q. How many rows of bales were there running from the extreme after row to the extreme forward row?

A. I didn't count them.

Q. Do you know the length of the No. 1 between-decks where this wool was stowed?

A. I should judge about 43 feet.

Q. That is between the wooden bulkhead and the collision bulkhead?

A. Yes, sir.

38 Cross-examined by counsel for libellant Winter.

By Mr. MYNDERSE:

Q. What is your position?

A. Marine superintendent.

Q. For the Prince line?

A. For the Prince line.

Q. This was one of the vessels of the Prince line?

A. Yes, sir.

Q. You are resident agent in New York?

A. Not agent, superintendent.

Q. Resident superintendent in New York?

A. Yes, sir.

Q. Who are agents in New York?

A. John C. Seager.

Q. Where does the Prince line run?

A. The particular line from New York runs to the Brazils and the River Plata.

Q. In the trade indicated in the official log of the *Portuguese Prince?*

A. The *Portuguese Prince*, yes, sir.

Q. Have you ever been on the line?

A. On the Brazilian trade, not on the River Plata trade.

Q. Since you have been on it in connection with the Prince line, have you?
A. Yes, sir.
Q. They receive and deliver cargo at each of these ports?
A. They do, sir; or they did.
Q. And is the line known down there by the name of the Prince line?
A. It is.
Q. Advertised as such?
A. Advertised as such.
Q. Resident agents in each port?
A. In each port.
Q. They engage freight and attend to the vessel's business generally?
A. They do.
Q. Engage cargo, I mean?
A. They do engage cargo.
Q. And attend to the deliveries and collection of freight and generally acting as agents of the vessels in each port?
A. They do.
Q. The master is the navigator of the vessel?
A. He is the owner's representative.
Q. He is the navigator of the vessel?
A. He is the navigator.
39 Q. He is not a business representative?
A. He does.
Q. Who makes the freight engagements?
A. The agent does.
Q. Not the master?
A. He generally confers with the master.
Q. When was this line established?
A. I don't know the exact date.
Q. About when?
A. That line to the Brazils was established about four years ago.
Q. And maintained still?
A. It is.
Q. And how about the River Plata trade?
A. About the same time.
Q. That is still maintained?
A. That is still maintained.
Q. These vessels are all carriers of general cargo?
A. They are. They are A1 ones.
Q. They don't run under charter?
A. No.
Q. What are the classes of cargo that they carry?
A. They carry every description of cargo.
Q. From here to South America and from South America back?
A. Back.
Q. When you say "every decription of cargo" what do you mean?
A. General merchandise.

Q. Such as the products——
A. Such as the products of the different countries.
Q. They carry sugar, wet sugar?
A. They do.
Q. This bulkhead which existed between the wool and the sugar was not a part of the original construction of the vessel?
A. It was not, it was a temporary bulkhead.
Q. Do you know when it was put in?
A. It is moved about to suit the convenienc- of the cargo. It would be hard to say when it was put in.
Q. Do you know when it was put in the particular position it occupied on this trip?
A. I do not.

By the COURT:

Q. Do you say it was put on on this trip?
A. No, sir.
Q. You don't know?
A. I don't know.
Q. You don't know whether it was put on on this trip or before this trip?
40 A. No; they always carry one or two of these bulkheads for the convenience of the ports, and they are just put up at any time it is required.

By Mr. BLACK:

Q. What is the name of the captain of this vessel?
A. Anderson.
Q. How long had he commanded her in December, 1894?
A. He commanded the *Portuguese Prince* from the time we bought her. I don't exactly remember how long, whether it was two or three years.
Q. Before this time?
A. About two years. He has been in her about three years now altogether.

Redirect by counsel for respondents.

By Mr. KIRLIN:

Q. Is he still in command of her?
A. He is still in command of her.
Q. He had been in her about a year and a half at the time of this matter?
A. About a year and a half or two years.
Q. Did she have a full set of officers and men?
A. She had a full set of officers.
Q. In what condition was she generally as to seaworthiness?
A. First class.
Q. Who, as between the master and agent in Brazil, is reponsible for the stowage of cargo and trim of the vessel?

Counsel for the Worsted Mills and libelant Winter object.

The COURT: The word "responsible" I strike out. You can ask whose duty it was.

Q. Whose duty was it, as between the agent and the master in Brazil, to attend to the placing of the cargo in the ship, its stowage and the trim of the vessel itself?

A. The master's duty.

Q. Is there any rule in the Prince line as to the liability of the master for damage of the cargo?

A. Yes, they are especially warned.

Counsel for the Worsted Mills objects to the answer.

41 Q. In case of actual damage the ship being held responsible for it, is the master charged with the damage?

A. The master is severely censured.

Q. Is the master obliged to pay for the damage as between him and the owner?

Objected to.

Question excluded.

Testimony closed.

42 RESPONDENT'S EXHIBIT A.

United States District Court, Southern District of New York.

BOTANY WORSTED MILLS *against* JAMES KNOTT.

WINTER *against* JAMES KNOTT.

It is stipulated between the parties as follows:

Wet sugar was stowed in the No. 2 'tween-decks at Pernambuco. There was a wooden bulkhead not tight between this place and the forward or No. 1 'tween-decks, in which libellant's wool was stowed. There was no damage to the wool from sugar drainage until the ship was trimmed by the head at Para, as shown in the official log, which is offered in evidence. It was damaged by sugar drainage finding its way through the bulkhead and reaching the wool, at Para, or between Para and Port of Spain. After the ship was again trimmed by the stern at Port of Spain, none of the drainage from the sugar found its way into the forward 'tween-decks. The court may draw inferences.

(S'd) GEO. A. BLACK,
Proctor for Botany Worsted Mills.

(S'd) BUTLER, STILLMAN & HUBBARD,
Proctors for Winter.

(S'd) CONVERS & KIRLIN,
Proctors for James Knott.

New York, June 5th, 1896.

(Here follow bills of lading marked pp. 42*a*, 42*b*, & 42*c*.)

lition, by Wachsen &

apparent good order and condition, for shipm

..... is Master for this present

bound for New York

omewards, to call at .....

receive and discharge Coals, Cargo and Passe
ock, or elsewhere, in the said ship, and to en
els in all situations, although deviating ther
ed of the voyage)

Three Bales V

delivered in the like good order and condit

hatever kind, whether on board or not, or by lar
sulting from effects of climate, heat of holds, v
all injury to the same, sweating, rust, natural
evaporation from them, or from the leakage,
d ship, or from their stalls, however caused, or
f any goods shipped, risk of lighterage, to or
oading, or in the ship, or after unloading, or
kdown or injury to, or defect in hull, tackle, boi
however such damage, defect, or injury may b
on, stranding, straining, jetti-son of any kind,
of Land Transit of whatsoever nature or kin
rongful act, default, negligence or error in j
the ship, whether employed on the said steam
by unseaworthiness of the Ship at the begin
r by any cause whatever excepted, and even
share in all expenses incurred just as if the a

ipper remaining liable for the same for the

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rt of the above-mentioned Steamer's dischar
han the Port of the above-mentioned Steame
demand, at the current rate of exchange on
York and Antwerp Rules, 1890.

at any subsequent period, and so often as m
or Vessel, whether belonging to the Compa

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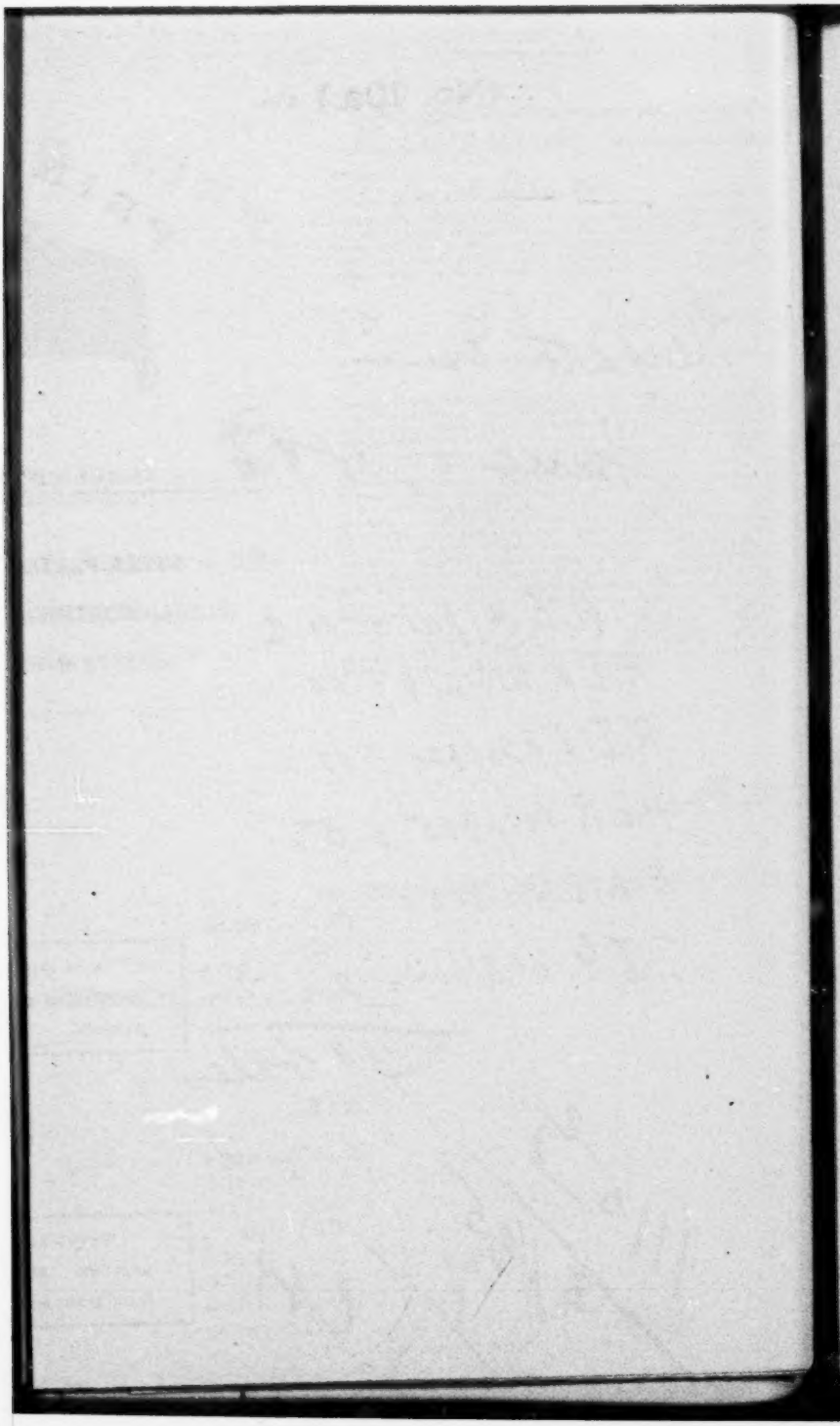

43 RESP'D'T'S EXHIBIT D, JUNE 5, '96.

Dates of arrival at and departure from each port touched at, with the freeboard and draught of water upon every occasion of the ship proceeding to sea.

Arrival or departure.	Date.	Hour.	Dock, wharf, port, or harbor at which the ship arrives or from which she proceeds to sea.	Draught of water in salt water at time of proceeding to sea.		Freeboard amidships corresponding to foregoing draught.	
				Forward.	*Aft.*	*Port.*	*Starboard.*
Arriv.	11.11.94	2 p. m.	Montevideo..... ..	20.6	20.4	6.6	6.6
Dep...	25.12.94	4 p. m.	Buenos Ayres.....	21.0	21.6	5.8	5.8
Arr...	2. 1.95	7.15 a. m.	Santos.....	20.8	20.9	6 2½	6.2½
Dep...	29. 1.95	1.30 p. m.	"	20.0	16.0	8.11	8.11
Arr...	31. 1.95	1 p. m.	Rio de Janeiro,.....	19.8	16.0	9.1	9.1
Dep...	7. 2.95	3 p. m.	"	15.6	20.0	9.2	9.2
Arr...	12. 2.95	4.30 p. m.	Bahia.....	15.4	19.6	9.3	9.5
Dep...	14. 2.95	3 a. m.	"	15.7	20.0	9.1½	9.1½
Arriv.	16. 2.95	8 a. m.	Macio	15 6	19.9	9.3½	9.3½
Dep...	17. 2.95	5 p. m.	"	14.6	21.6	8.11	8.11
Arriv.	19. 2.95	2.30 p. m.	Pernambuco	14.6	21.3	8.9½	8.9½
Dep...	24. 2.95	4 p. m.	"	21.6	22.4	5.—	5.—
Arriv.	3. 3.95	9 a. m.	Para	21.3	21.9	5.5	5.5
Dep...	10. 3.95	8 p. m.	"	19.6	17.6	8.5	8.5
Arriv.	16. 3.95	8 p. m.	Port of Spain, Trinidad.	19.3	17.6	8.6½	8.6½
Dep...	18. 3.95	11 p. m.	" ..	18.0	19.0	8.5	8.5
Arriv.	19. 3.95	2.30 p. m.	Grenada.....	18.0	18.11	8.5½	8.5½
Dep...	20. 3.95	1 a. m.	"	18.0	18.11	8.5½	8.5½
Arriv.	20. 3.95	6.30 p. m.	Port Castries (St. Lucia).	17.5	21.5	7.6	7.6
Dep...	20. 3.95	11.45 p. m.	" ..	17.6	21.9	8.3½	8.3½
Arr...	31. 3.95	11.15 p. m.	New York.....	17.3	20.3	8.1	8.1

I hereby certify the foregoing to be a true extract from the log of the *Portuguese Prince* (official No. 84073), deposited on record in this office.

[SEAL.]

J. N. GARDNER,
Assistant Registrar General.

Fee 1 / 8.

W. H. L.

44 RESPONDENT'S EXHIBIT E.

Lying at Pernambuco, Tuesday 19th Feb.—The day commenced with fine weather, light breeze—10.45 a. m. Hove short, 11 a. m. Got under weigh full speed ahead and proceeded into port in charge pilot. At 11.45 passed fort on reef going dead slow. At noon let go anchor and proceeded to moor ship. 12.15 rung off engines. 2.30 p. m. finished mooring. 1 p. m. commenced discharging cargo from No. 2 hold. 4 p. m. finished No. 2 hold and started at No. 4 hold. During the night until midnight working cargo with two gangs, No. 2 and No. 4, holds.

Feb. 20, Wednesday, lying at Pernambuco.—1 a. m. Started working cargo again. During the day discharging aft and taking sugar No. 2 hold. Weather fine throughout. From 6 p. m. till midnight work- cargo No. 2 and 3 taking sugar with two gangs. Finished discharging aft. 3 p. m. cleared up hold ready for taking in general cargo.

FEB. 21ST, THURSDAY.

1 a. m. Started work again taking sugar No. 2 and 3 hold. 6 a. m. day gangs started working with three gangs taking in sugar for New York, in No. 2 and 3 holds and general cargo for Para No. 4 hold. Fine weather throughout. 5.30 p. m. day gangs finished work for the day. 6 p. m. night gangs started working, one gang only, sugar in No. 2 hold. 10 p. m. stopped working crude sugar and commenced taking in general cargo for Para in fore part No. 2 hold. At midnight fine weather.

FEB. 22D, FRIDAY.

1 a. m. Started work again on No. 2 with general cargo for Para. 6 a. m. night gang finished work. 6.30 a. m. day gangs started work, one gang aft and one for'ard, both taking in cargo for Para. 5.30 p. m. finished, working cargo for the day and did not do any night work this night.

45 FEB. 23D, SATURDAY.

6 p. m. Commenced work taking in general cargo aft and sugar for'ard in No. 3 hold. At noon stopped taking in sugar as ship is too deep for taking any more. During the afternoon working general cargo fore and aft. 5.30 p. m. finished for the day. Weather fine throughout.

FEB. 24TH, SUNDAY.

6 a. m. Commenced taking in remainder of general cargo alongside, working with one gang. 11 a. m., finished taking in general cargo and proceeded to make everything ready for leaving port. Weather fine throughout. Draft when finished taking cargo was for'ard 21 ft. 6 ins., aft 22 ft. 4 ins. 4 p. m. hove short and proceeded to get under weigh, 4.10 slow ahead, 4.35 p. m. stopped to discharge pilot, 4.40 full sp'd ah'd. At 5.15 set course east, ship rolling, secured all gear about the deck. 6.30 stopped for engineers, Pernambuco W. bearing N. 65° W., at 8 fine clear wr. Pernambuco W. bearing N. 63° W. 8.15 full sp'd ah'd. 8.30, 8 to 12 p. m. streamed log. Set course N. E. by N. Light easterly breeze and smooth sea. Weather fine and clear. At midnight log 38'.

46 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Wind.	Force.	Weather.	Bar.	Monday, 25th Feb'y, 1895.
1	N. E. by N.	9½	East'ly...	2	Fine.....	.....	1 a/c to N. N. E.
2	N. N. E....	7½	" ..	"	.....	.....	Light breeze & fine
3	"	7½	" ..	"	.....	.....	weather with S. E. swell.
4	"	7½	" ..	"	.....	29.82	4 a/c to N. by E. Log 68
5	N. by E. ..	....	" ..	"	.....	.....	miles.
6	"	....	" ..	"	"	.....	Dev. 2° E. by Arnpr.
7	"	....	" ..	"	"	.....	Washed decks
8	"	....	" ..	"	"	29.80	Fine clear wr. 101
9	"	....	" ..	4	Squally..	.....	Error by Clo. 13m. 30s.
10	North	....	E. N. E..	3	" ..	.....	loosing daily 1 5.
11	"	....	" .	....	Overcast.	.....	9 a. m. a/c north log
12	"	....	" ..	....	" ..	.....	12′ first part of watch
1	"	....	" ..	....	.....	29.86	squally with rain
							Afterwards light breeze & light sea with overcast & dull weather.
							S. GILSON.
2	"	....	" ..	....	Cloudy ..	.....	Light breeze & cloudy
3	"	....	" ..	....	" ..	.....	weather with easterly swell.
4	"	...	" ..	....	" ..	29.80	Log 33 miles.
5	"	....	" ..	....	" ..	.....	5 Dev. by Azt. 2° E.
6	"	...	" ..	....	" ..	.....	6 cleared up decks.
7	"	....	" ..	....	" ..	...	
8	"	...	" ..	....	" ..	29.80	Cloudy & fine wr. log 67′.
9	"	8	" ..	3	Clear....	.....	10.35 p. m. a/c N. N. W. log 86′
10	"	8	" ..	"	"	.....	Light breeze & smooth sea
11	N. N. W...	8	" ..	"	"	.....	Weather fine & clear
12	"	8	" ..	"	"	.....	At midnight log 99′
							S. GILSON.

47 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Winds.	Force.	Weather.	Bar.	Tuesday, 26th Feb'y, 1895.
1	N. N. W.....	8	E. S. E..	4	Fine	.....	2 a. m. a/c to N. W. by N. ½ N. log 16′
2	"	8	"	"	"	.....	Moderate breeze & fine clear weather.
3	N. W. by....	8	"	"	"	.....	
4	N. ½ W.....	8	"	"	"	29.75	A. a/c to N. W. by N. log 33.
5	N. W. by N. ...	...	"	"	"	.....	
6	"	....	"	"	"	.....	Dev. ampl. Nil.
7	"	....	"	"	"	.....	Washed decks.
8/20	"	....	"	"	"	29.75	Fine clear wr. 66
9	N. W	8	E. N. E .	3	"	.. ...	8.20 a/c N. W. log 68.
10	"	8	"	"	"	.....	Light to mod. breeze &
11	"	8	"	"	"	.....	smooth sea. Weather fine, but cloudy.
12/	"	8	"	"	"	29.74	At noon a/c N. W. ½ W. Dist. run 185 miles.
1	N. W. ½ W ..	8	"	"	Squally..	.....	2 a squall of rain passed over.
2	"	8	"	"	"	.....	Moderate breeze & fine with
3	"	8	"	"	Fine	.....	Easterly swell. log 36 miles.
4	"	8	"	"	"	29/70	
5	"	"	"	...	.....	.....	Error pr. azt. 12° W.
6	"	"	"	....	.....	.....	Cleared up decks.
7	"	"	"	....	.....	.....	
8	"	"	"	....	.....	29.70	Cloudy threat'g rain. log 68′
9	"	8	Easterly.	3	Cloudy ..	.....	
10	"	8	"	"	"	.....	Light to moderate
11	"	8	"	"	"	29.72	breeze & slight following sea. Weather
12	"	8	"	"	"	.....	fine but cloudy towards midnight. Showery. log 106′

S. GILSON.

56 *Log of the S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	K.	Winds.	Force.	Weather.	Bar.	Remarks, Wednesday, 13th March.
1	N. N. W...	8	N. E...	4	Cloudy...	.....	
2	" ...	8	" ...	"	" ...	.....	Moderate breeze & cloudy
3	" ...	8	" ...	"	" ...	.....	weather with heavy N. E.
4	" ...	8	" ...	"	" ...	29.54	swell. Ship rolling heavily at times.
5	" ...	....	" ...	"	"		log 33 miles.
6	" ...	....	" ...	"	" ...	.....	Dev. *azmuith* 3° E.
7	" ...	...	" ...	"	" ...	.....	7 a/c N. W. by W.½ W.
8	N.W. by W. ½ W.	....	" ...	"	" ...	29.56	Cloudy with rain. log 68′
9	"	8	" ...	"	" ...	....	Mod. trades & sea & heavy swell.
10	"	8	" ...	"	" ...	.....	Weather dull & overcast.
11	"	8	" ...	"	" ...	.....	Latterly drizzling rain.
12	"	8	" ...	"	Raining .	29.58	At noon a/c to N. W. ½ W.
1	N. W. ½ W.	9	" ...	5	" ..	.....	Distance run 243 miles.
2	"	9	" ...	"	" ..	.....	
3	"	9	" ...	"	Cloudy...	.....	Fresh trade & cloudy with
4	.....	9	" ...	....	" ...	29.55	squally appearance to N. E.
5	"	....	" ...	....	" ...	.....	& high N. E. swell. Ship rolling considerably.
6	"		" ...	....	" ...	.....	log 36 miles
7	"		" ...	....	" ...	.....	Sun obscured throughout.
8	"	8½	" ...	..	" ...	29.55	Same wr. log 71′
9	"	8½	" ...	"	" ...	.....	
10	"	8½	" ...	"	" ...	.....	Mod. trades & sea weather
11	"	8½	" ...	4	" ...	.....	cloudy.
12	"	8½	" ...	"	" ...	.....	At midnight, log 106′

S. GILSON.

57 *Log of the S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	K.	Wind.	Force.	Weather.	Bar.	Remarks, Thursday, 14 March
1	N. W. ½ W.	8½	N. E...	5	Cloudy ..		
2	"	8½	" ...	"	" ..	.....	Strong breeze & cloudy
3	"	8½	" ...	"	" ..	.....	weather, heavy N. E. swell
4	"	8½	" ...	"	" ..	29.56	still running and ship roll-
5	"	....	" ...	..	" ..	.....	ing heavily, log 40′
6	"	....	" ...	....	" ..	.....	Cloudy & fine high sea.
7	"	....	" ...	....	" ..	....	Error amp. 1° W.
8	"	...	" ...	....	" ..	....	Set one sail.
9	"	8½	E. N. E.	4	" ..	29.58	Cloudy & fine. 74′.
10	"	8½	"	"	" ..	.....	9 a. m. Foretopsail bent &
11	"	8½	"	"	" ..	.....	set. Mod. breeze & sea.
12	"	8½	"	"	" ..	29.56.	Weather fine but cloudy.
							Lat. 7′ 53 lon. 53. 50.
1	N. W. by W.	8½	"	5	Fine ...	.....	Dist. run, 230 miles.
2	½ W.	8½	"	"	" ..	.....	a/c N. W. by W. ½ W.
3	"	8½	"	"	" ..	.....	Fresh breeze & fine weather
4	"	8½	"	"	"	29.60	with N. E. sea. log 36.
5	"	...	"	...	" ...	.....	
6	"	....	"	....	"	.....	Error azt. 1° W.
7	"	....	"	....	" ..	.....	
8	"	....	"	....	"	29.61	Same wr. log 71′
9	"	8½	"	4	"	.....	
10	"	8½	"	"	"	.....	Mod. trades & sea.
11	"	8½	"	"	"	.....	Weather fine & clear.
12	"	8½	"	"	" ...	29 60	At midnight log 105′.
	"						S. GILSON.

58 *Log of the S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	K.	Winds.	Force.	Weather.	Bar.	Remarks, Friday, 15th March, 1895.
1	N. W./ W.	8½	N. E.	5	Fine		
2	½ W.	8½	"	"	"		Fresh trade & fine weather
3	"	8½	"	"	"		High N. E. sea still running
4	"	8½	"	"	"	29/64	Ship lurching heavily. log 44′
5	"		"		"		
6	"		"		"		
7	"		"		"		Error pr. azt. Nil.
8	"		"		"	29.68	Fine clear wr. log 80.
9	"	9	"	4	"		
10	"	9	"	"	"		Mod. breeze & sea
11	"	9	"	"	"		Weather fine & clear
12	"	9	"	"	"	29.67	Dist. *rem.* 238 miles
1	W./N. ¾ N.	9	N. E.	5	Fine		Noon a/c to W. by N. ¾ N.
2	"	9	"	"	"		Fresh breeze & fine weather
3	"	9	"	"	"		with N. E. swell. log 39 miles.
4	"	9	"	"	"	29/64	
5		9	"	"	"		
6		"	"	"	"		Error pr. agr. O ½ W.
7		"	"	"	Squally	29/64	
8		"	"	"	"		Squally with rain a/c W. N. W.
9	W. N. W.	9½	"	"	"		
10	"	9½	"	"	"		
11	"	9½	"	"	"		Dry squally weather with strong breeze & following sea.
12	"	9½	"	"	"		Weather fine & clear. Midnight log 117′

S. G.

59 *Log of S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	K.	Winds.	Force.	Weather.	Bar.	Remarks Saturday, 16th March, 1895.
1	W. N. W....	9	N. E....	5	Squally..	.....	
2	" .. .	9	"	"	" ..	.....	Fresh breeze &
3	"	9	"	"	" ..	.....	squally with light showers of rain.
4	"	9	"	"	" .	29.64	4 a. m. Log 56 miles.
5	"	"	"	"	" ..	.....	
6	"	"	" ...	"	" ..	.....	Error ampl. Nil.
7.30	Orders.....	"	"	"	" ..	.....	6.30 obs'd land on so. bow
8	"	"	"	"	" ..	29.72	a/c orders log 88
9	"	9	"	4	Fine.....	.....	9 a. m. a/c W. by S.
10	W. by S. ½ S. .	9	"	"	"	....	½ S. log 90' 11.15
11	" ..	9	"	3	"	.....	Tobago light-house about dist. 6 miles. Light to mod. breeze & smooth sea. Weather fine. Log at noon 225.
12	" ..	9	"	"	"	29.70	Dist. run, 215 miles.
1	S. by W. ½ W.	9½	"	3	"	.....	
2	"	9½	" ...	"	"	.....	2.35 a/c to S. W. by
3	S. W. by W. ½ W.	9½	" . ..	2	"	.....	W. ½ W. log 26' Light breeze & fine but cloudy weather. Log 38 miles.
4	Orders.....	9½	"	"	"	29.67	
5	"	9½	" ..	"	"	.....	5.50 p.m. entered the Bocas. 6.10 p. m. through Bocas &
6	"	9½	" ...	"	"	.....	heading for Port of Spain. 6.55 p. m.
7	"	9½	" ...	"	"	.....	slowed down. 7.45 stopped & let go anchor in 3¾ fthms.
8	"		"	"	"	.....	water. 7.50 rung off light breeze & fine weather.

SUNDAY, 17*th March.*

Day commenced with fine weather & light breeze. 6 a. m. put gig in the water. 7 a. m. customs cleared ship. Did not work cargo during the day. Weather fine throughout.

60 MONDAY, 18*th March.*

6 a. m. Commenced taking in cargo for New York into No. 5 hold. Weather fine during the day. 6 p. m. worked two hatches 4 & 5. 10.30 finished cargo. Made ready for sea. 11 p. m. hove short. 11.10 got under weigh slow astern. 11.15 full sp'd ah'd. Steering W. ½ S.

Log of the "Portuguese Prince" from Trinidad Toward Grenada.

TUESDAY, 19*th March*, 1895.

Hours.	Courses.	Knots.	Wind.	Force.	Weather.	Bar.	Remarks.
1	Orders.....	8	N. E..	5	Clear..	.....	
2	North.....	8	" ..	"	" ..	.....	1.20 passed through Bocas, streamed log & set course north. Mod. breeze & clear weather with N. E. swell log 24′
3	"	8	" ..	"	" ..	.....	
4	"	8	" ..	"	" ..	29.80	
5	"	8	" ..	"	" ..	.....	Error amp. Nil.
6	"	9	" ..	"	" ..	.....	6 a. m. sighted Grenada.
7	N. by E.....	8	" ..	"	" ..	29.84	8 a/c N. by E. Fine cloudy weather log 57. 8.30 a/c N. by E. ½ E. during forenoon steering by orders.
8	"	8	" ..	"	" ..	.....	
9	N. by E. ½ E.	8	" ..	"	" ..	.....	
10	"	8	" ..	"	" ..	.....	11.15 slow ah'd. 11.30 let go anchor and waited for pratique.
11	Orders.....	8	" ..	"	" ..	.....	
12	"	8	" ..	"	" ..	.....	1.10 p. m. Doctor came off & gave the ship pratique. 1.20 got under

weigh and proceeded to the wharf in charge of pilot. 2 p. m. arrived alongside wharf and moored ship. 2.30 p. m. commenced taking in bunker coals and cargo. At 10 p. m. finished taking in cargo. 11.30 p. m. stopped taking in coals. Weather fine throughout.

61 United States District Court, Southern District of New York.

BOTANY WORSTED MILLS
vs.
JAMES KNOTT.

HENRY P. WINTER ET AL.
vs.
THE SAME.

In admiralty—Damages to cargo.

George A. Black and W. Mynderse, for libellants.
Convers & Kirlin, for defendant.

BROWN, *J.*:

The respondent, the owner of the British steamship *Portuguese Prince*, is sued in the above libels for damages to two lots of wool in bales shipped on board at Pernambuco, arising from contact of

the bales with sugar drainage upon the voyage to New York, where she arrived on March 30, 1895.

The bales of wool were stowed on end in the No. 1 (forward) compartment of the 'tween-decks; and wet Pernambuco sugar, from which there is always some drainage, was stowed on the same deck, next aft of the wool and separated from it by a temporary bulkhead. There was sufficient means of escape for the sugar drainage, provided it ran aft as designed; and it did run aft so long as the ship was not down by the head. But the ship called at several ports after leaving Pernambuco, among others at Para; and through changes in the cargo loading at Para she was considerably down by the head when she left that port on March
62 10th, and so continued until her arrival at Port of Spain on March 18th, where the error in her trim was corrected. But during this interval the sugar drainage ran forwards, where it had no means of escape; and the temporary bulkhead not being tight, the drainage ran under or through the temporary bulkhead and accumulated forward of it so as to extend above the dunnage on which the wool was laid, and thus damaged the lower tiers of bales. No damage occurred before the ship got down by the head at Para, nor after her trim was righted at Port of Spain.

The bill of lading contains numerous exceptions of liability, including "damage by stowage, leakage, &c., though caused by the negligence of the master," &c. It also provides that the contract shall be governed by the law of the flag (English); and it is admitted that by the English law such exceptions are valid. The respondent relies on these exceptions of the bill of lading, and upon the United States Harter act (act of February 13, 1893, 27 St. L., 445; 2 Supp. R. S., 81, sec. 3).

I am of opinion that the exemption from liability for damages arising through error or fault "in the management of the vessel," does not extend to a case like the present, though the question has caused me no little embarrassment. The primary cause of the damage was negligence and inattention in the loading or stowage of the cargo, either regarded as a whole, or as respects the juxtaposition of wet sugar and wool bales placed far forward. The wool should not have been stowed forward of the wet sugar unless care was taken in the other loading, and in all subsequent changes in the loading, to see that the ship should not get down by the head. There was no fault or defect in the vessel herself. She was constructed in the usual way and was sufficient. But on sailing from Para she was a little down by the head, through inattention during the changes in the loading to the effect these changes made in the trim of the ship and in the flow of the sugar drainage. She was not down by the head more than
63 frequently happens. It in no way affected her seagoing qualities; nor did the vessel herself cause any damage to the wool. The damage was caused by the drainage of the wet sugar alone. So that no question of the unseaworthiness of the ship arises. The ship herself was as seaworthy when she left Para as when she sailed from Pernambuco. The negligence consisted in stowing the

wool far forward without taking care subsequently that no changes of loading should bring the ship down by the head. I must, therefore, regard the question as solely a question of negligence in the stowage and disposition of cargo, and of damage consequent thereon, though brought about by the effect of these negligent changes in loading on the trim of the ship.

It is urged that the regulation of the trim of the ship is a part of the "management of the ship," and hence within the Harter act. And so it doubtless is, wherever the regulation of the trim is designedly done, and done primarily with reference to the ship, and for the benefit of the ship, or with a view to her seagoing qualities. Here nothing of that kind was contemplated. The change of trim was merely incidental, the mere negligent result of the changes in the loading, no attention being given to the effect on the ship's trim, or on the sugar drainage. The handling of the ship's appliances with reference to the navigation or the safety of the ship, for the purposes of the voyage, belong to "the management of the ship." Thus in the *Silvia*, 64 Fed., 607, where the officers had neglected to close the iron shutter of a porthole, in consequence of which in rough weather sea water came in and damaged the cargo, it was held by this court that the neglect arose in the "management of the vessel," and was covered by the Harter act, even though from the inaccessibility of the open port, as considered by this court, the open port amounted to unseaworthiness; because the neglect consisted in not making use of the things supplied by the owner to put and keep the ship herself in a proper condition to meet stormy weather. The result was affirmed in the court of appeals (15 C. C. A., 362; 68 Fed., 230) though the port was
64 deemed easily enough accessible for closing to allow the ship to be called seaworthy.

So in the recent case of *The Glenochil* (1896) Prob. Div., 10, where, at the close of the voyage, and before the cargo had been delivered, it was found necessary to fill the ballast tanks with water in order to stiffen the ship; but on the voyage the sounding pipe and casing had become cracked and broken, so that in filling the tanks the water escaped through the breaks and damaged the cargo; the failure to examine the pipes before turning on the water was found to be negligence, but within the Harter act, because the negligent acts were done with the ship's appliances and for the ship's safety, and hence were a part of "the management of the ship:"

"The negligence," says President Jeune, "consisted in the mismanagement of part of the appliances of the ship; a mismanagement which arose because it was intended to do something for the benefit of the ship, viz., to stiffen her—the necessity for stiffening arising because part of the cargo had been taken out of her. It was further considered that the Harter act is designed to 'prevent exemptions in the case of direct want of care in respect to the cargo, and to permit exemption in respect to the faults primarily connected with the navigation or with the management of the vessel, and not with the cargo.'"

In the same case Sir Gorrell Barnes observes that it was a fault

in the management of the vessel in doing something necessary for the safety of the ship herself; that in the first and third sections of the Harter act "there will be found a strong and marked contrast in the provisions which deal with the care of the cargo, and those which deal with the management of the ship herself; and that where the act done is done for the safety of the ship herself, and not primarily done at all in connection with the cargo, that
65 must be a matter which falls within the words 'management of said vessel.'"

On the other hand, in the case of the Ferro (1893) Prob. Div., 38, where the bill of lading contained an exemption from responsibility from damage for any act, &c., "in the navigation or management of the ship," it was held that the improper stowage of oranges by which they suffered damage was not covered by the term "management of the ship."

A further reason for excluding the present case from the exemption of the 3d section of the Harter act is found in the express prohibitions of the first section against the insertion of any stipulations in the bill of lading for relieving the vessel or owner from "loss or damage arising from negligence, or failure in proper loading or stowage of all lawful merchandise committed to their charge." The evident intent is that ship and owner must answer for such damages. The general words of the 3d section, "management of the vessel" cannot receive a construction which would contradict the evident and particular intent of the first section. The different parts of the same act must be construed harmoniously, so far as possible. The scope of a general phrase must be restricted so as not to contradict the more particular provisions of other parts of the same act. And so here, since this damage arose through negligence in the particular mode of stowing and changing the loading of cargo, as the primary cause, though that cause became operative through its effect on the trim of the ship, this negligence in loading falls within the first section. The ship and owner must, therefore, answer for this damage, and the 3d section is inapplicable.

2. It is contended, however, that if the negligence be treated as one of loading and stowage the express exemptions of the bill of lading apply, and exempt the ship under the stipulation that the English law shall govern, since the English law upholds such exemptions.

66 In the case of Baetjer *v.* Compagnie Generale, 59 Fed., 789, it was considered that such stipulations should be upheld when made within a foreign jurisdiction that sustains them, and when the damage and the cause of action arose within that foreign jurisdiction. In the Trinacria (42 Fed., 863) however it was said to be a "wholly different question whether the courts of this country should sustain contracts or stipulations as regards acts performed and designed to be performed either on the high seas or within the exclusive jurisdiction of this country, when such stipulations are by our law void on the ground of public policy." In the present case the contract was not made nor was any part of it intended to be performed within British jurisdiction. In the absence of any proof

48 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Wind.	Force.	Weather.	Bar.	Wednesday, 27th Feb'y, 1895.
1	N. W. ½ W ..	8	East'ly ..	3	Showery.	.....	
2	"	8	"	"	"	.....	A. M. Light breeze,
3	"	8	"	"	.....	.....	cloudy with occasional showers of small rain.
4	"	8	"	"	"	29.68	Log 41′ miles I. F.
5	"	...	"	"	"	.....	
6	"	....	"	"	"	... .	Error pr. arnpc. 11°W.
7	"	....	"	"	"	... ..	Washed decks.
8	"	....	"	"	"	29.68	Cloudy with rain at times.
9	"	8	"	"	Cloudy..	....	Light to mod. breeze
10	"	8	"	"	"	.....	with slight following sea. Weather fine but cloudy. At noon a/c N. W./W.
11	"	8	"	"	"	.....	
12	"	8	"	"	"	29.66	Dist. run 225 M.
1	N. W./W ...	8½	"	"	... .	.....	
2	"	8½	"	"	.....	.....	
3	"	8½	"	"	.....	.....	Moderate breeze &
4	"	8½	"	"	"	29.62	cloudy weather with easterly swell. log 35 miles.
5	"	....	"	....	"	.....	Error azh. 10½ W. I. F.
6	"	....	"	....	"	.....	Cleared up decks.
7	"	....	"	....	"	.....	Lights attended to.
8	"	....	"	....	"	29.62	Cloudy & fine wr. 69.
9	"	8	Var-ble .	3	"	.....	
10	"	8	"	"	"	.....	Light to mod. breeze with following sea. Weather cloudy with light clouds.
11	"	8	"	"	Showery.	.....	Vessel rolling heavy at
12	"	8	"	2	"	29.64	times & shipping water occasionally. log 105′

S. GILSON.

49 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Winds.	Force.	Weather.	Bar.	Thursday, 28th February, 1895.
1	N.W.1 W.	8½	East...	3	Cloudy & showers.		
2	"	8½	" ...	"	"	.....	Light breeze & overcast with showers of heavy rain & N. E. swell.
3	"	8½	" ...	"	"	.....	
4	"	8½	" ...	"	"	29.63	log 40 miles
5	"	"	" ...	"	"	.....	I. F.
6	"	"	" ...	"	"	.....	Error amp, 10° W.
7	"	"	" ...	"	"	.....	Washed decks.
8	"	....	" ...	"	"	.....	Cloudy with rain log 72½
9	"	8½	" ...	"	Overcast.	....	9 a. m. a/c W. N. W.
10	N. N. W..	8½	" ...	4	"	.....	Mod. breeze & following sea
11	" ..	8½	" ...	"	"	.....	Weather overcast
12	" ..	8½	" ...	"	"	29.65	
1	" .	8½	" ...	"	"	.....	
2	" ..	8½	" ...	"	"	.....	Moderate breeze & overcast with occasional swell rain & heavy easterly swell. vessel rolling considerably.
3	" ..	8½	" ...	"	"	.....	
4	" ..	8½	" ...	"	"	29.62	log 35 miles
5	" ..	"	" ...	....	"	... ..	
6	" ..	"	" ...	....	"	.....	Sun obscured throughout
7	" ..	"	" ...	....	"	.....	
8	" ..	...	" ...	...	"	29.61	Cloudy & o'cast log 68′
9	" ..	6	" ...	3	"	.....	
10	" ..	6	" ...	"	"	.....	Light breeze & slight following sea. Weather overcast & showery.
11	" ..	6	" ...	"	"	.....	
12	" ..	6	" ...	"	"	29.66	log 92′

S. GILSON.

50 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Winds.	Force.	Weather.	Bar.	Remarks, Friday, 1st March /95.
1	W. N. W....	8½	Vble...	2	Cloudy ..	.....	1 a. m. a/c to west log 100
2	West	8½	" ...	"	"		2a. m a/c to W.½ S. log 109
3	W. ½ S.....	8½	" ...	"	" ..	.....	4 light variable winds &
4	"	8½	" ...	"	" ..	29.65	fine but cloudy. log 27
5	"	...	.....	...	.....	.....	miles.
6	.....	....	.....	....	.....	.....	Washed decks
7	.....	...	... ...	....	.....	.....	Error pr azh. 6° W.
8	....	....	.....	....	....	29.66	Cloudy & fine wr. 61
9	.....	....	... ...	....	....	.....	
10	.....	...	.....	....	.....	.....	
11	.....	....	.....	...	.. ..	.....	
12	.....	....	.....	....	.....	.. ...	a/c to W. by S. ½ S.
1	W. by S. ½ S.	8	N. E...	2	Clear ...	.....	Light breeze & fine
2	.....	8	" ...	"	"	.....	weather log 33 miles
3	"	8	" ...	"	"	.....	
4	"	8	" ...	"	"	29.68	
5	"	...	" ...	.....	"	.....	Error pr; azh. 50 W.
6	"	...	" ...	....	"	.....	Cleared up decks
7	"	....	" ...	..	"	.....	7 a/c W. ½ W.
8/25	W. ½ N.	....	" ...	...	"	29.70	Cloudy & fine wr. log 64′
9	W. by S. ½ S.	....	N. N. E.	3	Cloudy & hazy	.....	8/25a/cW. byS.½S. log68′ 9.15 slow ahd. a/c N. by E. log 75′
10	Various.....	....	"	"	"	.....	10.20 half spd a/c S. by W. ½ W. log 78′ 10.55 slow ahead a/c north.
11	"	....	"	"	"	.....	Mod. breeze & slight sea. Weather cloudy with hazy horizon. Sea covered with phosphorous. Not able to sight Italia light. At midnight log 85′
12	North.... ..	....	"	4	"	29.65	

S. GILSON.

51 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.	K.	Wind.	Force.	Weather.	Bar.	Saturday, March 2nd, 1895.
1	North	4	V'blo. ..	2to4	Rain..	....	2 a. m. a/c to S. 5½ W. log 94.
2	S. ½ W....	4	"	"	" ..	.....	3 " a/c to north log 98.
3	" ...	4	" ...	"	" ..	.....	Unsteady wind & cloudy with frequent showers of rain.
4/15	North	4	" ...	"	" ..	29.70	4 log 102 miles 4.15 a/c south.
5	South	4½	"	"	" ..	....	4.30 ½ speed. Cloudy with rain.
6	"	5½	"	"	" ..	....	5.15. F. S. Cloudy with rain.
7	"	8	" ...	"	" ..	.....	Sun obscured for sights.
8	"	8	" ...	"	" ..	29.	Cloudy with rain 129.
9	E. N. E..	....	"	3	Heavy rain squalls.	..	8.15 hauled the log in & eased the engines down. Weather thick & a/c E. N. E. 8.30 a. m.
10	By orders.	..	"	4	" ..	.....	Went astern to take soundings, 17 fathoms water; then slow ah'd 10 a. m. slow astern to take soundings. 15½ fathms.
11	"	...	"	"	" ..	.....	Then went slow ah'd. Raining heavily all the forenoon
12	"	...	" ...	3	" ..	29.76	till 11.30 a. m. 12 a. m. sounded & got 15 fathms water. 11.45 steamed up set course S. by E. & full sp'd ah'd.
1	Various...	....	East'ly..	4	Cloudy	.....	Went aloft & sighted land from S. by E. to S.
2	.....	....	" ...	"	" ..	.....	1 Ran down towards pilot schooner lying in Sultinas bay.
3	.....	....	"	"	" ..	.....	3.20 Stopped for pilot.
4	By pilot's orders.		"	"	" ..	.....	3.30 Received pilot & proceeded immediately. 4. Moderate breeze & cloudy threatening appearance.
5	"	....	" ...	"	" ..	.....	
6	"	....	"	"	" ..	.....	Sun obscured.
7	"	....	"	"	" ..	.....	7 obs'd Para l't ship W. by S.
8	"	....	"	"	" ..	29.70	Cloudy & o'cast wr.
9	P. "	....	"	"	Clear..	.....	8.30. Passed Para River Light vessel.
10	"	....	"	"	" ..	.....	10.20 Passed Pt. Tapio light.
11	"	...	Southerly	2	" ..	.....	Light breeze. Weather fine & clear.
12	"	...	"	"	" ..	29.72	S. GILSON.

52 *Log of the S. S. "Portuguese Prince" from Pernambuco to Para.*

H.	Course.		Wind.	Force.	Weather.	Bar.	Sunday, 3rd March, 1895.
1	By pilot's orders.	....	N. e'ly..	2	Cloudy	.....	A. M. 0.45 Passed Colores light.
2	"	...	" ..	"	"	....	2.20 Chapeo Virado light.
3	"	....	" ..	"	"	....	3.20 Anchored in 7 fathoms water veered to 35 faths. cable on the hawser. Calm & cloudy weather.
4	"	....	" ..	"	"	29.72	
5	"	....	" ..	"	"	.....	9.30 a. m. Passed fort below
6	"	....	" ..	"	"	.....	Para & eased down half sp'd
7	"	...	" ..	"	"	.....	8.45 slow 8.50 half sp'd astern
8	"	....	" ..	"	"	.....	& let go anchor in 3¼ fathoms
9	"	....	" ..	"	"	... .	water, half way between fort
10	"	....	" ..	"	"	.....	& town Para. 9.15 hove up again dropped a few lengths astern as water was too shallow and finally anchored in 4 fathoms water & moored with 30 fthms. water's edge & waited till there was enough water to allow the vessel to pass. During the forenoon landed mail & passengers. During the afternoon heavy squalls rain. Towards evening weather a little more settled.

Monday, 4th March, 1895, lying — Para river.

6 a. m. Made everything ready for discharging cargo. Weather cloudy. 6.50 hove short. 7.5 got under weigh and proceeded further up the river. 7.45 let go anchor off the town in four fathoms water & moored with both anchors. Started cargo 9 a. m. But had to stop for heavy rain which lasted till 10.30 a. m. Then commenced discharging deck cargo fore & aft. During the afternoon discharged all Para cargo from No. 3 hold & commenced on No. 2 5.30 p. m., finished work for the day. During latter part of the day till midnight weather fine. Working with two gangs.

Tuesday, 5th March, 1895, lying at Para.

The day commenced with fine weather, 7 a. m. Started discharging from No. 1 & 4 holds. During the forenoon weather cloudy and threatening. 12.40 p. m. had to stop for rain. 1.10 p. m. started again 2 p. m. had to stop for rain which came down heavily and lasted for the remainder of the day & evening, so were not able to work any more today. Working two gangs.

53 Wednesday, 6th March, lying at Para.

The day commenced with cloudy but dry weather, 7 a. m. started working cargo during the forenoon till 11 o'clock rain kept off during the time men were at breakfast raining heavily. At noon cleared up & started again. At 2 p. m. raining again & had to stop for half hour. At 4.30 p. m. had to finish working cargo for the day, as it rained unceasingly from this time till about 9 p. m. During the day working cargo out of No. 5 hold & lazarette aft & No. 1 & 2 for'ard. Working three gangs.

Thursday, 7th March, lying at Para.

7 a. m. Commenced working cargo with three gangs, 2 for'ard and one aft. Were delayed for half an hour during the afternoon by rain, otherwise weather was fine the remainder of the day. 5.30 p. m. finished work for the day.

Friday, 8th March, lying at Para.

During the day weather fine, no stoppages during the day working three gangs from 7 a. m. to 5.30 p. m.

Saturday, 9th March, lying at Para.

7 a. m. Commenced working cargo, two gangs only, one forward and one aft. 12.30 p. m. finished discharging all Para cargo forward and started on No. 5 lower hold. 5.30 p. m. finished for the day. Weather cloudy but no rain till evening.

Sunday, 10th March, lying at Para.

7.45 a. m. Commenced working cargo No. 4 and 5 holds with two gangs. Fine weather throughout. 5.30 finished discharging all Para cargo; lowered derricks, etc., and made everything ready for sea. 7.35 p. m. commenced to heave up the anchor. 7.50 weighed anchor and slow astern. 8 p. m. full speed ahead and proceeded down the river. Weather fine, steering by pilot's orders. At 11.45 p. m. passed Fort de Para light. At midnight total eclipse of the moon.

54 *Log of the S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	Knots.	Winds.	Force.	Weather.	Bar.	Remarks.
a. m.							
1	N. N. W.	8	N. E.	5	Cloudy		Tuesday, 12th March, a/c to N. N. W.
2	"	8	"	"	"		
3	"	8	"	"	"		Fresh trade & cloudy with
4	"	8	"	"	"	29.50	occasional rain & mod.; N.
5	"	8	"	"	"		E. sea log 34′ J. E.
6	"	8	"	"	"		Sun clouded.
7	"	8	"	"	"		
8	"	8	"	"	"	29.54	Cloudy & squally, log 170′
9	"	8	"	"	"		
10	"	8	"	"	Raining		Strong trades & mod. sea.
11	"	8	"	"	"		Weather squally & with
12	"	8	"	"	Cloudy	29.52	heavy showers of rain.
1	"		"		"		At noon more settled. Dist. run 193′ min.
2	"		"		"		Fresh breeze & cloudy with
3	"		"		"		N. E. swell, ship rolling &
4	"		"		"	29.50	lurching heavily at times,
5	"		"		"		log 32 miles.
6	"		"		"		Sun obscured throughout.
7	"		"		"		
8	"		"		"	29.50	Cloudy with rain, log 64.
9	"	8	"	4	"		
10	"	8	"	"	"		Mod. trades light sea.
11	"	8	"	"	"		Heavy swell from N. E. ves-
12	"	8	"	"	"	29.54	sel rolling about. At mid- night log 100.

S. GILSON.

55 *Log of the S. S. "Portuguese Prince" from Para to Trinidad.*

H.	Courses.	K.	Winds.	Force.	Weather.	Bar.	Remarks.
1	Pilot orders		V'ble				Variable wind with heavy showers of rain & dull cloudy weather. J. F.
2							
3							
4			W		Rain	29.60	4.15 passed Bank lt. ship rain continually sun obscured throughout
5	Orders		"		"		
6	"		"		"		
7	"		"		"	29.62	7.32 passed River Para lt. ship cloudy with heavy rain. 8.15 stowed anchors & pilot left ship. 8.20 full spd ahd. Courses till 11.30 a. m. were various. 11.30 set course N. by W. log 20′ During forenoon raining heavily the whole time.
8	"		"		"		
9	"		"		"		
10	"		Var'ble		"		
11	"		"		"		
12	N. by W		"		"	29.58	At noon log & reset
1	"		N. E.		Cloudy		Run since leaving about 100 miles
2	"		"		"		
3	"		"		"	29.54	Light breeze & dull cloudy weather with N. E. swell.
4	"		"		"		
5	"		"		"		log 35 miles J. F.
6	"		"		"		Dev. by azh. 3° 00′ E.
7	"		"		"		
8	"		"		"	29.50	Cloudy & o'cast.
9	"	8½	"	4	"		Strong breeze & mod. sea.
10	"	8½	"	"	"		
11	"	8½	"	"	"		Weather cloudy. At midnight a/c N. N. W. log 100.
12	"	8½	"	"	"		

S. GILSON.

of the law either at the port of shipment or at Para, where this negligence occurred, there is no presumption that the law of either place differs from our own. The damage arose upon the high seas. Foreign law is administered only upon principles of comity. This cannot be allowed to subvert in our courts our own positive law, founded upon public policy, as respects contracts to be performed in part within our jurisdiction and in part upon the high seas.

In this respect the present case is precisely like that of Lewisohn *v.* The National S. S. Co., 56 Fed., 602, where similar stipulations were held invalid. In the case of The Silvia, 15 C. C. A., 362; 68 Fed., 230, 231, it is said by the court of appeals that the carriers' "responsibility to the cargo-owner who sues in the courts of this country cannot be curtailed in any of the particulars prohibited by the (Harter) act." In the case of The Glennavis, 69 Fed., 472, 476, the same conclusion was reached by Judge Butler on full consideration; and I have nothing further to add to what has already been said in this court in previous cases. The Brantford City, 29 Fed., 373, 396; The Hugo, 57 Fed., 403–11; The Etona, 64 Fed., 880; The Guildhall, 58 Fed., 796; The Energia, 56 Fed., 124, 127; affirmed 13 C. C. A., 653; 66 Fed., 604; see The Iowa, 50 Fed., 561.

67 Decree for the libellant, with reference to compute the damages.

Dated, New York, October 15, 1896.

At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms in the U. S. post-office building, in the city of New York, on the 5th day of December, 1896.

Present: Hon. Addison Brown, district judge.

BOTANY WORSTED MILLS, Libellant,
vs.
JAMES KNOTT, Respondent.

This cause having been heard upon the pleadings and proofs and having been argued by the advocates for the respective parties, and due deliberation having been had, on motion of Black & Kneeland, proctors for the libellant, it is—

Ordered, adjudged and decreed that the libellant recover against the respondent the amount of the damages sustained by it by reason of the matters alleged in the libel herein and the amount of said damages having been fixed by consent at the sum of $1,049.31, it is—

Ordered, adjudged and decreed that the libellant, The Botany Worsted Mills, recover against the respondent, James Knott, said sum of $1,049.31, with interest from the 30th day of March, 1895, amounting to $105.80, together with its cost taxed at the sum
68 of $36.43, and amounting in all to the sum of $1,191.54.

And it is further ordered, that unless an appeal be taken from this decree within the time limited by the rules and practice of this court, the stipulators for costs and value on behalf of the re-

spondent cause the engagements of their respective stipulations to be performed or show cause within four days after the expiration of said time to appeal or on the first day of jurisdiction thereafter why execution should not issue against their goods, chattels and lands for the amount of their stipulations.

It is further ordered, that unless an appeal be taken from this decree as aforesaid, the clerk of this court pay to the libellant or its proctors the sum of $100 deposited by libellant in the registry in lieu of the stipulation for libellant's costs.

(S'g'd) ADDISON BROWN.

(Endorsed:) Final decree. Filed Dec. 5, 1896.

69 United States District Court, Southern District of New York.

BOTANY WORSTED MILLS, Libellant,
vs.
JAMES KNOTT, Respondent.

SIRS: Please to take notice that the respondent appeals to the United States circuit court of appeals for the second judicial circuit, from the final decree made and entered herein and filed in the office of the clerk of the United States district court for the southern district of New York, on the 5th day of December, 1896.

Dated New York, December 7, 1896.

Yours, etc., CONVERS & KIRLIN,
Proctors for Respondent.

To Messrs. Black & Kneeland, proctors for libellant; Samuel H. Lyman, Esq., clerk.

(Endorsed:) Notice of appeal. Filed Dec. 7, 1896.

70 United States Circuit Court of Appeals for the Second Circuit.

BOTANY WORSTED MILLS, Libellant, Appellee,
vs.
JAMES KNOTT, Respondent, Appellant.

The respondent assigns error to the final decision of the district court herein, as follows:

1st. For that the court held that since the damage to the bales of wool arose through negligence in the particular mode of stowing and changing the loading of the cargo, as the primary cause, although that cause became operative through its effect on the trim of the ship, such negligence in loading and trimming the vessel fell within the first section of the Harter act, and that the third section was inapplicable.

2nd. For that the court held that the ship and owner must answer for the damage to the bales of wool by contact with the sugar, due to the improper trim of the vessel, and that the third section

of the Harter act was inapplicable, and did not exempt the vessel and owner from responsibility for the damage.

3rd. For that the court held that the change of trim at Para was not a fault or error "in the management of the vessel," within the third section of the Harter act.

4th. For that the court omitted to hold that the owners of said vessel used due diligence to make her seaworthy and have her properly manned, outfitted and equipped for the voyage, and that the loss and damage here sued for resulted from a fault or
71 error in the management or navigation of said vessel, within the third section of the Harter act.

5th. For that the court held that the exception in the bill of lading, "damage by stowage, leakage, etc., though caused by the negligence of the master, etc.," was void and did not exempt the vessel and owner from responsibility for the damage to the wool.

6th. For that the court held that the stipulation in the bill of lading, that the contract should be governed by the English law, could not be sustained or applied, and that the contract was not to be construed by such law.

7th. For that the court omitted to hold that the loss and damage here sued for were within the exceptions of the bill of lading pleaded in the answer, and that the said exceptions were valid and enforceable.

6th. For that the court did not dismiss the libel herein, with costs.

CONVERS & KIRLIN,
Proctors for Respondent, Appellant.

(Endorsed:) Assignment of error. Filed Dec. 26, 1896.

72 At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms thereof in the city of New York, on the 31st day of October, 1896.

Present: Hon. Addison Brown, district judge.

HENRY P. WINTER and Others
against
JAMES KNOTT.

This cause having come regularly on to be heard and having been submitted upon the pleadings, proceedings and proofs, and after hearing arguments of the proctors for the respective parties, and due deliberation having been had in the premises, and the amount of the libellants' damages having been agreed upon by and between the parties without reference, now, upon motion of Butler, Notman, Joline & Mynderse, proctors for the libellants, it is

Ordered, adjudged and decreed, that the libellants recover of the respondent the sum of three hundred and forty-five dollars and forty-eight cents ($345.48), the amount of their damages as agreed upon, together with interest thereon from the 15th day of May, 1895, amounting at the date of this decree to the further sum of

thirty dollars and thirteen cents ($30.13), together with their costs as taxed, amounting to the further sum of thirty-six dollars and sixty-three cents making in all the total sum of four hundred and twelve dollars and twenty-four cents; and that they have execution therefor. And it is further ordered, adjudged and decreed that, unless an appeal be taken from this decree within the time and in the manner prescribed by the rules and practice of this court, or this decree be sooner satisfied, then the stipulators upon
73 the stipulations for costs and for value given by the respondent show cause, within four days thereafter why execution should not issue against them, their goods, chattels and lands.

ADDISON BROWN.

Damages agreed to as above and notice of settlement waived.

CONVERS & KIRLIN,
Proctors for Resp'd't.

(Endorsed:) Final decree. Filed Nov. 2, 1896.

United States District Court, Southern District of New York.

HENRY P. WINTER ET AL., Libellants,
vs.
JAMES KNOTT, Respondent.

SIRS: Please take notice that the respondent appeals to the United States circuit court of appeals, for the second judicial circuit, from the final decree made and entered herein and filed in the office of the clerk of the United States district court, for the southern district of New York, on the 31st day of October, 1896.

Dated, New York, November 17, 1896.

Yours, etc.,
CONVERS & KIRLIN,
Proctors for Respondent.

To Messrs. Butler, Notman, Joline & Mynderse, proctors for libellants; Samuel H. Lyman, Esq., clerk.

(Endorsed:) Notice of appeal. Filed Nov. 17, 1896.

74 United States Circuit Court of Appeals for the Second Circuit.

HENRY P. WINTER ET AL., Libellants, Appellees,
vs.
JAMES KNOTT, Respondent, Appellant.

The respondent assigns error to the final decision of the district court herein, as follows:

1st. For the court held that since the damage to the bales of wool arose through negligence in the particular mode of stowing and changing the loading of the cargo, as the primary cause, although that cause became operative through its effect on the trim of the ship, such negligence in loading and trimming the vessel fell within

the first section of the Harter act, and that the third section was inapplicable.

2d. For that the court held that the ship and owner must answer for the damage to the bales of wool by contact with the sugar, due to the improper trim of the vessel, and that the third section of the Harter act was inapplicable, and did not exempt the vessel and owner from responsibility for the damage.

3d. For that the court held that the change of trim at Para was not a fault or error "in the management of the vessel," within the third section of the Harter act.

4th. For that the court omitted to hold that the owners of said vessel used due diligence to make her seaworthy and have her properly manned, outfitted and equipped for the voyage, and that the loss and damage here sued for resulted from a fault or
75 error in the management or navigation of said vessel, within the third section of the Harter act.

5th. For that the court held that the exception in the bill of lading, "damage by stowage, leakage, etc., though caused by the negligence of the master, etc.," was void and did not exempt the vessel and owner from responsibility for damage to the wool.

6th. For that the court held that the stipulation in the bill of lading, that the contract should be governed by the English law, could not be sustained or applied, and that the contract was not to be construed by such law.

7th. For that the court omitted to hold that the loss and damage here sued for were within the exceptions of the bill of lading pleaded in the answer, and that the said exceptions were valid and enforceable.

8th. For that the court did not dismiss the libel herein, with costs.

CONVERS & KIRLIN,
Proctors for Respondent, Appellant.

(Endorsed:) Assignment of errors. Filed Dec. 26, 1896.

76 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

BOTANY WORSTED MILLS, Lib'l't & Appellee,
vs.
JAMES KNOTT, Resp'd't & Appellant.

HENRY P. WINTER and CHARLES F. SMILLIE, Lib'l'ts & Appellees,
vs.
JAMES KNOTT, Resp'd't & Appellant.

I, Samuel H. Lyman, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the foregoing is a correct transcript of the record of the district court in the above-entitled cause, made up pursuant to rule No. 4, in admiralty, of the United States circuit court of appeals, for the second circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern [SEAL.] district of New York, this 18th day of January in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the said United States the one hundred and twenty-first.

SAM'L H. LYMAN, *Clerk.*

77 U. S. Circuit Court of Appeals, Second Circuit.

BOTANY WORSTED MILLS, Appellee,
vs.
KNOTT, Appellant.

Per Curiam:

We agree in this case with the court below that the damage to the wool of the libelant was due not to "fault or error in the management or navigation of the vessel," but to negligence in the loading or stowage of the cargo, and deem it unnecessary to add anything to the observations of Judge Brown upon the point.

A majority of the court also concur in the conclusions of the court below that the exception in the bill of lading for liability for "damage by stowage * * * though caused by the negligence of the master," notwithstanding the provision that the contract should be governed by the law of the flag (English) did not relieve the owner of the steamship, such a stipulation being against the public policy of this country and therefore not enforceable by its courts, and approve the decisions in the Trinacria (42 Fed. Rep., 863); the Glenmavis (69 Fed. Rep., 472); the Iowa (50 Fed. Rep., 561). In this view of the case it is unnecessary to decide whether the prohibitions of the Harter act apply to a bill of lading issued at a foreign port.

The decree is affirmed, with interest and costs.

(Endorsed:) U. S. cir. ct. of appeals, second circuit. Botany Worsted Mills, appellee, *vs.* Knott, appel-ant. *Per curiam.* United States circuit court of appeals, second circuit. Filed
78 Jul- 21, 1897. William Parkin, clerk.

At a stated term of the United States circuit court of appeals for the second circuit, held at the U. S. court-rooms, in the post-office building, in the city of New York, on the — day of June, 1897.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

BOTANY WORSTED MILLS, Libelant and Appellee,
vs.
JAMES KNOTT, Respondent and Appellant.

This cause having come on to be heard on the appeal of the respondent herein from a final decree of the district court of the United States for the southern district of New York, entered on the 5th day of December, 1896, and having been argued and submitted, and due deliberation having been had,

Now, on motion of Black & Kneeland, proctors for the libelant, appellee, it is

Ordered, that said decree of the said district court be and the same is hereby affirmed, with interest and costs, and that a mandate issue to said district court in the form hereto attached.

E. H. L.

(Endorsed:) U. S. circuit court of appeals, second circuit. Botany Worsted Mills *vs.* James Knott. Order and mandate and
79 notice of settlement. Black & Kneeland, proctors for lib't, 44 Pine street, New York city. United States circuit court of appeals, second circuit. Filed Jun- 1, 1897. William Parkin, clerk.

At a stated term of the United States circuit court of appeals for the second circuit, held in the post-office building, in the city of New York, on the 31st day of July, 1897.

Present: Hon. William J. Wallace, P. J.; E. Henry Lacombe, Nathaniel Shipman, JJ.

HENRY P. WINTERS and Others
against
JAMES KNOTT.

This case having came on to be heard on the appeal of the respondent from a decree in favor of the libelants entered in the office of the clerk of the district court of the United States for the southern district of New York, on the 31st day of October, 1896, and after hearing Mr. Kirlin, of counsel for the respondent and appel-ant, in favor of said appeal, and Mr. Mynderse, of counsel for the libelants and respondents in opposition thereto, and due deliberation having been had, it is, on motion of Butler, Notman, Joline & Mynderse, proctors for libelants,

Ordered that said decree be and the same hereby is in all respects affirmed, and it is further

Ordered that a mandate issue to said district court of the United States for the southern district of New York directing said
80 court to proceed in accordance with the opinion of this court.

W. J. W.
E. H. L.

Approved as to form.

CONVERS & KIRLIN,
Proctors for App'ts.

(Endorsed:) U. S. circuit ct. of appeals for the second circuit. Henry P. Winter and others against James Knott. Order. Butler, Notman, Joline & Mynderse, proctors for libelants & respondents, 54 Wall street, New York city. United States circuit court of appeals, second circuit. Filed July 31, 1897. William Parkin, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing

pages, numbered from 1 to 80 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cases of Botany Worsted Mills, libelant, appellee, against James Knott, respondent, appellant, and Henry P. Winter and others, libelants, appellees, against James Knott, respondent, appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 13th day of November, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the said United States the one hundred and twenty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

Endorsed on cover: Case No. 16,720. U. S. circuit court of appeals, 2d circuit. Term No., 194. James Knott, petitioner, *vs.* Botany Worsted Mills and Henry P. Winter & Charles F. Smillie. Filed November 15th, 1897.

81 United States Circuit Court of Appeals for the Second Circuit.

BOTANY WORSTED MILLS, Libellant, Appellee,
against
JAMES KNOTT, Respondent, Appellant.

HENRY P. WINTER and CHARLES F. SMILLEY, Libellants, Appellees,
against
JAMES KNOTT, Respondent, Appellant.

It is hereby stipulated and agreed that the certified copy of the transcript of the record in the circuit court of appeals, filed with the application for the writ of certiorari herein and now on file in the office of the clerk of the Supreme Court of the United States, be taken and used as the return to the writ of certiorari issued herein by the Supreme Court of the United States December 7, 1897, with the following amendment, to be added at the end of the opinion of the circuit court of appeals (Rec., p. 77), namely: "Lacombe, C. J., concurs in result."

It is further stipulated that the clerk may attach this stipulation to the writ as his return hereto.

New York, December 22, 1897.

BLACK & KNEELAND,
Proctors for Botany Worsted Mills.
BUTLER, NOTMAN, JOLINE & MYNDERSE,
Proctors for Winter and Smilley.
CONVERS & KIRLIN,
Proctors for James Knott.

A copy.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

82 To the honorable the Supreme Court of the United States:

The record and all proceedings of the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is annexed hereto, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, December 24, 1897.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

83 [Endorsed:] United States circuit court of appeals, second circuit. Botany Worsted Mills *vs.* James Knott. Henry P. Winter *et al. vs.* Same. Return to writ of certiorari.

84 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you suits in which James Knott is appellant and Botany Worsted Mills is appellee and James Knott is appellant and Henry P. Winters and Charles F. Smillie are appellees, which suits were removed into the said circuit court of appeals by virtue of appeals from the *the* district court of the United States for the southern district of New York, and we being willing for certain reasons that the said causes and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
85 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceeedings in said causes so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

86 [Endorsed:] Case No. 16,720. Supreme Court of the United States. No. 194, October term, 1898. James Knott *vs.* Botany Worsted Mills & Henry P. Winter *et al.* Writ of certiorari and return.

[Stamped:] Office Supreme Court U. S. Filed Dec. 27, 1897. James H. McKenney, clerk.